# Senate, No. 2380, printed as amended

[Senate, April 8, 2010 – Text of the Senate Bill relative to economic development reorganization, being the text of S2345, printed as amended]



### The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND TEN

## AN ACT RELATIVE TO ECONOMIC DEVELOPMENT REORGANIZATION

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith a business-friendly environment that will stimulate job growth and improve the ease with which businesses can operate in the markets they serve, and to coordinate economic development activities funded by the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. The General Laws are hereby amended by inserting after chapter 3 the

2 following chapter:-

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3 CHAPTER 3A.

THE SUNSET ACT.

- Section 1. There is hereby established a procedure for the identification and elimination of waste, duplication and inefficiency in state government agencies and authorities established by statute, regulation or executive order to be known as the Sunset Act.
- 8 Section 2. As used in this chapter, the following words shall, unless the context clearly
  9 requires otherwise, have the following meanings:
- "Advisory committee", a committee, council, commission or other entity established under state law whose primary function is to advise a state agency.
  - "Agency", an agency as defined in section 1 of chapter 29.
  - " Authority", an authority as defined in section 1 of chapter 29.
- "Commission", the Sunset Advisory Commission established in section 3.
- Section 3.

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- (a) There shall be a Sunset Advisory Commission consisting of 3 members of the senate, 1 of whom shall be appointed by the minority leader of the senate, 3 members of house, 1 of whom shall be appointed by the minority leader of the house of representatives, 1 member from the Pioneer Institute, 1 member from Common Cause, 1 member from the McCormack Institute for Public Affairs and one member from the Associated Industries of Massachusetts. The president of the senate and the speaker of the house may serve as legislative appointees.
- (b) An individual shall not be eligible for appointment as a public member if the individual or the individual's spouse is:

(1) employed by an agency, advisory committee or authority that the commission will review during the term for which the individual would serve;

- (2) employed by, participating in the management of, or having, directly or indirectly, more than a 10 per cent interest in a business entity or other organization regulated by an agency, advisory committee or authority that the commission will review during the term for which the individual would serve; or
- (3) required to register as an executive or legislative agent under section 41 of chapter 3.
- (c) A public member of the commission shall be removed if the member does not have the qualifications required by subsection (b) for appointment to the commission at the time of appointment or does not maintain the qualifications while serving on the commission; provided, however that the validity of the commission's action shall be unaffected if taken when a ground for removal of a public member from the commission exists.
- (d) Legislative members shall serve 2-year terms, conterminous with their service as elected members of the legislature. If a legislative member ceases to be a member of the legislature, the legislator's position shall be declared vacant, and the balance of the term filled by another legislator appointed in the same manner as the previous appointee. If the president of the senate or the speaker of the house serves on the commission, service continues until resignation from the commission or until the individual ceases to hold the office. Public members shall serve 2-year terms expiring January 1 of each odd-numbered year.

(e) Members other than the president of the senate and the speaker of the house are subject to the following restrictions:

(1) after a public member serves 6 consecutive years on the commission, the

- (1) after a public member serves 6 consecutive years on the commission, the individual shall not be eligible for appointment to another term or part of a term until the expiration of 2 years;
- (2) a legislative member who serves a full term may not be appointed to an immediately succeeding term; and
- (3) a public member may not serve more than 3 consecutive 2-year terms; provided, however, that, for purposes of this prohibition, a member is considered to have served a term only if the member has served more than half of the term.
- (f) The president of the senate and the speaker of the house shall make their appointments before February 1 of each odd-numbered year.
- (g) If a legislative member ceases to be a member of the house from which the member was appointed, the seat held by that member shall be considered vacant.
- (h) If a vacancy occurs, the appropriate appointing authority shall appoint a person to serve for the remainder of the unexpired term in the same manner as the original appointment.
- (i) The commission shall have a chair and a vice-chair as presiding officers. The chair and vice-chair positions must alternate every 2 years between the 2 membership groups appointed by the president of the senate and the speaker of the house. The chair and vice-chair shall not be from the same membership group. The president of the senate shall designate a presiding officer from the president's appointed membership group and

69	the speaker shall designate the other presiding officer from the speaker's appointed
70	membership group.
71	(j) Seven members of the commission shall constitute a quorum. A final action or
72	recommendation may not be made unless approved by a recorded roll call vote of a
73	majority of members appointed by the president of the senate and the speaker of the
74	house. All other actions by the commission shall be decided by a majority of the
75	members present and voting, so long as a quorum is present.
76	(k) Subject to appropriation, each public member of the commission shall be entitled to
77	reimbursement for actual and necessary expenses incurred in performing commission
78	duties.
79	Section 5. The commission shall adopt rules necessary to carry out this chapter.
80	Section 6. Before July 1 of the odd-numbered year before the year in which an agency
81	advisory committee or authority subject to this chapter is abolished, the agency, advisory
82	committee or authority shall report to the commission:
83	(1) information regarding the application to the agency, advisory committee or
84	authority of the criteria set forth in section 10; and
85	(2) any other information that the agency, advisory committee or authority
86	considers appropriate or that the commission requests.
87	Section 7.
88	(a) Within 1 year of the appointment and qualification of the members of the commission,
89	and the organization of the commission staff, the commission shall assign sunset dates

for each agency, authority and advisory committee of the commonwealth, and shall

91	notify the head of such agency, authority and advisory committee of the date selected.
92	The commission shall then file legislation with the general court to implement the
93	abolition schedule.
94	(b) Before January 1 of the year in which an agency, advisory committee or authority
95	subject to this chapter is scheduled to be abolished, the commission shall:
96	(1) review and take action necessary to verify the reports submitted by the
97	agency, advisory committee or authority under this chapter;
98	(2) consult the house and senate committees on post audit and oversight, the
99	state auditor, the inspector general and the state comptroller, or their
100	successors, on the application to the agency, advisory committee or authority
101	of the criteria in section 10;
102	(3) conduct a review of the agency, advisory committee or authority based on the
103	criteria in section 10 and prepare a written report; and
104	(4) review the implementation of commission recommendations contained in the
105	reports presented to the legislature during the preceding legislative session
106	and the resulting legislation.
107	(c) The written report prepared by the commission under clause (3) of subsection (b) shall
108	be a public record.
109	Section 8.
110	(a) Before February 1 of the year in which an agency, advisory committee or authority
111	subject to this chapter and is to be abolished, the commission shall conduct public
112	hearings concerning, but not limited to, the application to the agency, advisory
113	committee or authority of the criteria in section 10

114	(b) The commission may hold the public hearings after the review of the agency, advisory
115	committee or authority is complete and available to the public.
116	Section 9.
117	(a) At each regular legislative session, the commission shall present to the legislature and
118	the governor a report on the agencies, authorities and advisory committees reviewed.
119	(b) In the report the commission shall include:
120	(1) its findings under section 10;
121	(2) its recommendations under this chapter; and
122	(3) other information the commission considers necessary for a complete review
123	of the agency, advisory committee or authority.
124	Section 10. The commission and its staff shall consider the following criteria in
125	determining whether a public need exists for the continuation of a state agency, authority or
126	advisory committee or for the performance of the functions of the agency, authority or advisory
127	committee:
128	(1) the efficiency and effectiveness with which the agency, authority or advisory
129	committee operates;
130	(2)
131	(a) an identification of the mission, goals, and objectives intended for the
132	agency, authority or advisory committee and of the problem or need that
133	the agency, authority or advisory committee was intended to address; and
134	(b) the extent to which the mission, goals and objectives have been achieved
135	and the problem or need has been addressed;

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- (a) an identification of any activities of the agency, authority or advisory committee in addition to those granted by statute and of the authority, agency or advisory committee for those activities; and
- (b) the extent to which those activities are needed;
- (4) an assessment of authority of the agency, authority or advisory committee relating to fees, inspections, enforcement and penalties;
- (5) whether less restrictive or alternative methods of performing a function that the agency, authority or advisory committee performs could adequately protect or provide service to the public;
- (6) the extent to which the jurisdiction of the agency, authority or advisory committee and the programs administered by the agency, authority or advisory committee overlap or duplicate those of other agencies, authorities or advisory committees, the extent to which the agency, authority or advisory committee coordinates with those agencies, authorities or advisory committees, and the extent to which the programs administered by the agency, authority or advisory committee can be consolidated with the programs of other authorities, agencies or advisory committees;
- (7) the promptness and effectiveness with which the agency, authority or advisory committee addresses complaints concerning entities or other persons affected by the agency, authority or advisory committee, including an assessment of the agency's, authority's or advisory committee's administrative hearings process;

159	(8) an assessment of the agency's, authority's or advisory committee's
160	rulemaking process and the extent to which the agency, authority or advisory
161	committee has encouraged participation by the public in making its rules and
162	decisions and the extent to which the public participation has resulted in rules
163	that benefit the public;
164	(9) the extent to which the agency, authority or advisory committee has complied
165	with:
166	(a) federal and state laws and applicable rules regarding equality of
167	employment opportunity and the rights and privacy of individuals; and
168	(b) state law and applicable rules of any state agency, authority or advisory
169	committee regarding purchasing guidelines and programs for historically
170	underutilized businesses;
171	(10) the extent to which the agency, authority or advisory committee issues
172	and enforces rules relating to potential conflicts of interest of its employees
173	and chapter 268A;
174	(11) the extent to which the agency or authority complies with chapters 66 and
175	66A and follows records management practices that enable the agency to
176	respond efficiently to requests for public information;
177	(12) the effect of federal intervention or loss of federal funds if the agency,
178	authority or advisory committee is abolished;
179	(13) the extent to which the authority has issued bonds or otherwise incurred
180	similar long-term obligations, the amount of outstanding bonded

181		indebtedness for which the authority is responsible and the sustainability of
182		another authority assuming responsibility for such long-term obligations;
183		(14) whether the authority is responsible for a retirement system for its
184		employees, and the extent of the authority's obligations and available funding
185		under such retirement system and for other post-employment benefits for
186		retired employees; and
187		(15) whether the agency, authority or advisory committee utilizes an open and
188		competitive bid process for third party contracts related to legal
189		representation, bonds and fiscal management.
190	Section	n 11.
191	(a)	In its report on an agency, authority or advisory committee, the commission
192	shall:	
193		(1) make recommendations on the abolition, continuation or reorganization of
194		each affected agency, authority or advisory committee, and on the need for
195		performance of the functions of the agency, authority or advisory committee;
196		(2) make recommendations on the consolidation, transfer or reorganization of
197		programs within agencies or authorities not under review when the programs
198		duplicate functions performed in agencies or authorities under review;
199		(3) make recommendations to improve the operations of the agency, its policy
200		body, authority or advisory committee, including management
201		recommendations that do not require a change in the agency's or authority's
202		enabling statute; and

203	(4) make recommendations to improve the efficiency and transparency in third
204	party contract awards related to legal representation, bonds and fiscal
205	management, including, but not limited to, recommending utilization of an
206	open and competitive bid process.

- (b) The commission shall include the estimated fiscal impact of its recommendations and may recommend appropriation levels for certain programs to improve the operations of the agency, authority or advisory committee, to be forwarded to the house and senate committees on ways and means and the executive office for administration and finance.
- (c) The commission shall prepare drafts of legislation to carry out the commission's recommendations under this section.
- (d) After the legislature acts on the report, the commission shall present to the secretary of administration and finance, the commission's recommendations that do not require a statutory change to be put into effect.
- Section 12. In the 2-year period preceding the date scheduled for the abolition of a state agency, authority or advisory committee under this chapter, the commission may exempt certain agencies, authorities or advisory committees from the requirements of this chapter relating to staff reports, hearings, and reviews.
  - (a) The commission may only exempt an agency, authority or advisory committee that has been inactive for a period of 2 years preceding the date the agency, authority or advisory committee is scheduled for abolition or that has been rendered inactive by an action of the legislature.

224	(b) The commission's action in exempting an agency, authority or advisory committee
225	under this section must be done by an affirmative record vote and must be decided by a
226	majority of all members present and voting.
227	Section 13. During each legislative session, the staff of the commission shall monitor
228	legislation affecting agencies, authorities and advisory committees that have undergone sunset
229	review and shall periodically report to the members of the commission on proposed changes
230	which would modify prior recommendations of the commission.
231	Section 14. An advisory committee, the primary function of which is to advise a
232	particular agency or authority, shall be abolished on the date set for abolition of the agency or
233	authority unless the advisory committee shall have been expressly continued by law.
234	Section 15.
235	(a) During the annual session immediately before the abolition of an agency, authority or an
236	advisory committee that is subject to this chapter, the legislature may continue the
237	agency, authority or advisory committee for a period not to exceed 12 years.
238	(b) This chapter shall not prohibit the legislature from:
239	(1) terminating a state agency, authority or advisory committee subject to this
240	chapter at a date earlier than that provided in this chapter; or
241	(2) considering other legislation relative to a state agency, authority or advisory

(a) An agency, authority or advisory committee that is abolished in an odd-numbered year may continue in existence until June 30 of the following year to conclude its business.

committee subject to this chapter.

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Section 16.

Unless the law provides otherwise, abolition does not reduce or otherwise limit the powers and authority of the agency or authority during the concluding year. An agency or authority is terminated and shall cease all activities at the expiration of the 1-year period. Unless the law provides otherwise, all rules that have been adopted by the agency or authority expire at the expiration of the 1-year period.

(b) An un-obligated or unexpended appropriation of an abolished agency or advisory committee shall lapse on September 1 of the year after abolition.

- (c) Except as provided by subsection (f) or as otherwise provided by law, all money in a dedicated fund of an abolished state agency, authority or advisory committee on September 1 of the year after abolition shall be transferred to the General Fund. The part of the law dedicating the money to a specific fund of an abolished agency becomes void on September 1 of the year after abolition.
- (d) Unless otherwise provided otherwise, an abolished state agency, authority or advisory committee funded by the legislature may not spend or obligate any of the money appropriated beyond 1 year from the date of abolition.
- (e) Unless the governor designates an appropriate agency as prescribed by subsection (f), property and records in the custody of an abolished state agency, authority or advisory committee on September 1 of the year after abolition shall be transferred to the state archives. If the governor designates an appropriate agency, the property and records shall be transferred to the designated agency.
- (f) The legislature recognizes the state's continuing obligation to pay bonded indebtedness and all other obligations, including lease, contract, and other written obligations, incurred by an agency or authority abolished under this chapter, and this chapter shall

not impair or impede the payment of bonded indebtedness and all other obligations, including lease, contract and other written obligations, in accordance with their terms. If an abolished agency or authority has outstanding bonded indebtedness or other outstanding obligations, including lease, contract or other written obligations, the bonds and all other obligations, including lease, contract and other written obligations shall remain valid and enforceable in accordance with their terms and subject to all applicable terms and conditions of the laws and proceedings authorizing the bonds and all other obligations, including lease, contract and other written obligations. The governor shall designate an appropriate agency or authority that shall continue to carry out all covenants contained in the bonds and in all other obligations, including lease, contract and other written obligations, to complete the construction of projects or the performance of other obligations, including lease, contract, and other written obligations. The designated agency or authority shall provide payment from the sources of payment of the bond under the terms of the bonds and shall provide payment from the sources of payment of all other obligations, including lease, contract and other written obligations, under their terms, whether from taxes, revenues, or otherwise, until the bonds and interest on the bonds are paid in full and all other obligations, including lease, contract and other written obligations, are performed and paid in full. If the proceedings so provide, all funds established by laws or proceedings authorizing the bonds or authorizing other obligations, including lease, contract and other written obligations, shall remain with the comptroller or the previously designated trustees. If the proceedings do not provide that the funds remain with the comptroller or the previously designated trustees, the funds shall be transferred to the designated agency or authority.

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292		Section 17.
293	(a)	The commission may issue a subpoena to compel the attendance of witnesses and the
294		production of books, records, papers and other objects necessary or proper for the
295		purposes of the commission proceedings. The subpoena may be served on a witness at
296		any place in the commonwealth.
297	(b)	If a majority of the commission directs the issuance of a subpoena, the chairman shall
298		issue the subpoena in the name of the commission.
299	(c)	If the chairman is absent, the chairman's designee may issue a subpoena or other process
300		in the same manner as the chairman.
301	(d)	If necessary to obtain compliance with a subpoena or other process, the commission may
302		issue attachments. The attachments may be addressed to and served by a constable,
303		sheriff or deputy sheriff in the commonwealth.
304	(e)	Testimony taken under subpoena must be reduced to writing and given under oath
305		subject to the penalties of perjury.
306	(f)	A witness who attends a commission proceeding under process shall be paid the same
307		fees and mileage paid witnesses in courts of the commonwealth.
308		Section 18.
309	(a)	The commission may request the assistance of agencies. When assistance is requested,
310		an agency or an agency officer shall reasonably assist the commission.
311	(b)	In carrying out its functions under this chapter, the commission or its designated staff
312		member may inspect the records, documents and files of any agency or authority.

Section 19.

- (a) A working paper, including all documentary or other information, prepared and maintained by the commission staff in performing its duties under this chapter or other law to conduct an evaluation and prepare a report is exempted from the public disclosure requirements of chapter 66.
- (b) A record held by another entity that is considered to be confidential by law and that the commission receives in connection with the performance of the commission's functions under this chapter or another law remains confidential and is exempted from the public disclosure requirements of chapter 66.

Section 20. If an employee is displaced because an agency, authority or advisory committee is abolished, reorganized or continued, the head of the agency, authority or advisory committee and the personnel administrator of the commonwealth shall make a reasonable effort to relocate the displaced employee. Except as otherwise expressly provided, abolition of an agency, authority or advisory committee shall not affect the rights and duties that matured, penalties that were incurred, civil or criminal liabilities that arose, or proceedings that were begun before the effective date of abolition.

### Section 21.

- (a) Each bill filed in the legislature that would create a new agency, authority or advisory committee to an agency shall be reviewed by the commission.
- (b) The commission shall review the bill to determine whether:
  - (1) the proposed functions of the agency, authority or committee could be administered by 1 or more existing agencies, authorities or advisory committees;

336	(2) the form of regulation, if any, proposed by the bill is the least restrictive form
337	of regulation that will adequately protect the public;
338	(3) the bill provides for adequate public input regarding any regulatory function
339	proposed by the bill; and
340	(4) the bill provides for adequate protection against conflicts of interest within
341	the agency, authority or advisory committee.
342	(c) On request, the commission shall forward a written comment on the legislation to the
343	author of the bill and to the presiding officer of the legislative committee to which the
344	bill has been referred.
345	Section 22. (a) The commission may accept from any source any grant, donation, gift or
346	other form of conveyance of land, money, other real or personal property or other item of value
347	made to the commonwealth or the commission for carrying out the purpose of this section and
348	sections 1 to 21, inclusive.
349	<b>SECTION 2.</b> Section 16G of chapter 6A of the General Laws, as appearing in the 2008
350	Official Edition, is hereby amended by striking out, in line 2, the words "a department" and
351	inserting in place thereof the following words:- the Massachusetts office.
352	SECTION 3. Said section 16G of said chapter 6A, as so appearing, is hereby further
353	amended by striking out subsections (i) and (j) and inserting in place thereof the following 2
354	subsections:-
355	(i) The secretary shall operate and administer an office of performance management and
356	oversight within the executive office. The secretary shall establish a performance measurement
357	system and report publicly on progress to improve the effectiveness of the commonwealth's

economic development efforts. Performance measurements shall include both output measures, such as numbers of inquiries and referrals, and outcome measures, such as jobs to be retained as a result of agency operations. Performance measurements shall include at least the then-current fiscal year and the previous 3 fiscal years. The system shall be applicable to the Massachusetts office of business development and all divisions or offices within that office, private entities with whom the office may contract to perform services on behalf of the office and agencies or authorities subject to section 56 of chapter 23A.

Agencies to which the system applies shall file an annual report with the office of performance management and oversight. The annual report, which shall be in a form and manner prescribed by the secretary, shall include:

- (1) a secretary approved agency plan for the year including the goals set for the year and the performance measurements by which to evaluate those goals and programs or initiatives; and
- 371 (2) the agency's:

- (i) operations and accomplishments; and
- (ii) performance on the goals and programs or initiative outlined in the agency's approved plan;
  - (iii) receipts and expenditures during the agency's fiscal year;
- (iv) assets and liabilities at the end of the agency's fiscal year;
- 377 (3) audited financial reports;

- (4) the number, nature and amounts of investments made and grants awarded;
- 379 (5) information detailing debt or equity investment;

- (6) the number, nature and amounts of any loans, real estate loans, working capital loans and guarantees approved;
  - (7) other forms of financing or financial assistance that the agency provided;
  - (8) a report of patents or products resulting from funded activities; and
  - (9) a description of technical assistance that the agency provided.

All information in the performance measurement system shall be a public record unless otherwise exempted by law. The annual reports of each agency shall be published and made available to the public not later than December 31. The report shall also be filed annually with the clerks of the senate and house of representatives, the chairs of the house and senate committees on ways and means and the house and senate chairs of the joint committee on economic development and emerging technologies.

(j) The office shall annually re-evaluate the goals and measures established by the office and agencies within the office and monitor the results that the agencies report. The office shall recommend changes to proposed goals and measures as are appropriate to align goals and measures with the statewide economic development policy and plan required under this section.

The office shall report regularly to the public on the progress the office and agencies within the office are making towards achieving stated goals. The office shall be responsible for reporting publicly and making all reports available on the internet.

The secretary shall use the performance measurements established in this section to determine the quality of service of all private entities, including regional economic development organizations that perform economic development services under contract with the office. The results of such performance measures shall be criteria used in negotiating any such contracts.

**SECTION 4.** Subsection (k) of said section 16G of said chapter 6A, as so appearing, is hereby amended by striking out the sixth sentence.

**SECTION 5.** Said section 16G of said chapter 6A, as so appearing, is hereby further amended by adding the following subsection:-

(l) During the first year of each new gubernatorial administration, the secretary of housing and economic development, with the assistance of a cabinet-level committee appointed under this section, shall develop and implement a written comprehensive economic development policy for the commonwealth and a strategic plan for implementing the policy. The strategic plan shall include any major economic development initiatives and programs of secretariat and any agencies subject to this section.

During the first year of each new gubernatorial administration, the governor shall appoint a cabinet-level committee to assist the secretary in the development of the policy and plan. The secretary shall be the chairperson of the committee and the secretaries of administration and finance, labor and workforce development, energy and environmental affairs and transportation shall serve as committee members. The governor may also appoint members of regional and local economic development groups and members of the business community to serve on the committee.

The committee shall review the published economic development policy and plan in effect at the commencement of the governor's term of office. Once the policy and plan have been adopted by the secretary and the committee and approved by the governor, it shall be published in writing and on the official website of the commonwealth not later than December 31 of that year and submitted to the house and senate for its consideration. The house and senate shall hold public hearings on the policy and plan.

**SECTION 5A:** Chapter 7 of the General Laws is hereby amended by inserting, after section 22M, the following section:-

SECTION 22N. Notwithstanding any general or special law to the contrary and to the extent permitted by federal law, a state agency or authority shall establish a preference for the procurement of products or services by businesses, as defined in section 3A of chapter 23A, with their principal place of business in the commonwealth.

**SECTION 6.** Subsection (c) of section 12 of chapter 7A of the General Laws, as appearing in section 4 of chapter 26 of the acts of 2009, is hereby amended by adding the following paragraph:-

The comptroller shall publish a list of state authorities and, in the comptroller's sole discretion, identify those entities within the list that shall be required under generally accepted accounting principles to report to the commonwealth for financial reporting purposes in a schedule and manner the comptroller deems necessary.

**SECTION 6A.** Section 10 of chapter 10 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following paragraph:- The state treasurer

shall semi-annually report to the house and senate committees on ways and means and the joint committee on revenue the lending and banking institutions into which the cash deposits of the commonwealth are being deposited.

**SECTION 6B.** Chapter 10 of the General Laws is hereby amended by inserting after section 10 the following section:-

Section 10A. The state treasurer shall establish a preference in the deposit of the commonwealth's cash reserves to those lending and banking institutions that exceed the statewide average for lending to small businesses, as defined in section 57 of chapter 23A; provided, however, that this shall not prohibit the treasurer from depositing and investing said reserves in such a manner as to secure the highest rate of return available consistent with the safety of said reserves.

**SECTION 7.** Section 35J of chapter 10 of the General Laws, as so appearing, is hereby amended by striking out, in lines 16 and 17, the words "International Trade Council" and inserting in place thereof the following words:- international trade office.

**SECTION 8.** Section 52 of said chapter 10, as so appearing, is hereby amended by striking out, in line 1, the words "the treasurer" and inserting in place thereof the following words:- travel and tourism established in chapter 23A.

**SECTION 8A.** Chapter 10 of the General Laws is hereby amended by inserting after section 53 the following section:-

Section 53A. The council shall establish criteria and guidelines for state designated cultural and creative districts. A cultural and creative district shall be a well recognized, labeled,

mixed-use, compact area of a city or town in which a high concentration of cultural and creative facilities serves as an anchor. The goals of a cultural and creative district shall include attracting artists and creative enterprises to a community, encouraging business and job development, establishing tourist destinations, preserving and reusing historic buildings, enhancing property values and fostering local cultural and economic development.

The council shall develop a certification program to prepare cities and towns to become home to a state designated cultural and creative district by creating an application process and developing qualifying criteria and guidelines.

A city or town may create a cultural and creative district and submit the district for designation by the council. If certified, a cultural and creative district certification shall remain in effect for 10 years following the date of certification.

Two or more cities or counties may apply jointly for certification of a district that extends across a common boundary.

**SECTION 9.** Chapter 10 of the General Laws is hereby amended by inserting after section 56 the following section:-

Section 56A. The council shall be subject to section 16G of chapter 6A and section 56 of chapter 23A.

**SECTION 10.** Section 9 of chapter 15A of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 172 and 173, the words, "section three of chapter six hundred and fourteen of the acts of nineteen hundred and sixty-eight" and inserting in place thereof the following words:- section 2 of chapter 23K.

**SECTION 11.** Said section 9 of said chapter 15A, as so appearing, is hereby further amended by striking out, in lines 182 to 185, inclusive, the words, "their affiliated building authorities, or any other organization affiliated therewith, as defined in paragraph (e) of said section three of said chapter six hundred and fourteen" and inserting in place thereof the following words:- as defined in section 2 of chapter 23K, or their affiliated building authorities, or any other organization affiliated with the institutions of higher learning.

**SECTION 12.** Section 10 of said chapter 15A, as so appearing, is hereby amended by striking out the definition of "HEFA" and inserting in place thereof the following definition:- the Health and Educational Facilities Authority, established by section 3 of chapter 23K.

**SECTION 13.** Section 12 of said chapter 15A, as so appearing, is hereby amended by striking out, in lines 23 and 24, the words, "pursuant to chapter six hundred and fourteen of the acts of nineteen hundred and sixty-eight" and inserting in place thereof the following words:-under chapter 23K.

**SECTION 14.** Said section 12 of said chapter 15A, as so appearing, is hereby further amended by striking out, in line 31, the words, "the provisions of said chapter six hundred and fourteen" and inserting in place thereof the following words:- chapter 23K.

**SECTION 15.** Section 1 of chapter 23A of the General Laws, as so appearing, is hereby amended by striking out, in lines 2 and 3, the words, "department of business and technology in this chapter called the department, which shall be under the control of the director of business and technology" and inserting in place thereof the following words:- Massachusetts office of business development, in this chapter referred to as MOBD, which shall be under the control of the director of business development..

**SECTION 16.** Said section 1 of said chapter 23A, as so appearing, is hereby amended by striking out subsection (b).

**SECTION 17.** Section 3A of said chapter 23A, as so appearing, is hereby amended by inserting after the definition of "Facility" the following definition:-

"MOBD", the Massachusetts office of business development established by section 1.

**SECTION 18.** Section 3I of said chapter 23A of the General Laws is hereby amended by striking out, in lines 2 and 33, as so appearing, the words, "the department" and inserting in place thereof, in each instance, the following words:- Massachusetts office of business development.

**SECTION 19.** Said chapter 23A is hereby further amended by inserting after section 3I the following 3 sections:

Section 3J. (a) The Massachusetts office of business development shall contract with eligible regional economic development organizations, as defined in section 3K, which shall serve as the primary points of contact in the various regions of the state for businesses seeking assistance, services or information from the commonwealth. The contract and reimbursements shall be designed to support regionally-based efforts to stimulate, encourage, facilitate and nurture economic growth and prosperity in the commonwealth, including but not limited to, activities related to the growth and retention of existing businesses and the attraction of new businesses into the commonwealth. The contracts shall support a network of partnerships between regional economic development organizations and the Massachusetts office of business

development in order to provide efficient and consistent response to businesses seeking assistance from the commonwealth.

The Massachusetts office of business development shall locate staff throughout the regions of the commonwealth in order to establish efficient and rapid access to all state government and quasi-public business services. The Massachusetts office of business development shall provide information to the regional economic development organizations about state economic development, business assistance, capital access and incentive programs, marketing activities and programs offered by agencies, authorities and private entities.

- (b) Each contract shall include performance criteria specific to the contracting organization developed under section 16G of chapter 6A and uniform standards for the use of contract funds related to accounting procedures, personnel practices, purchasing procedures and conflict of interest rules. As a condition to its receipt of funds, the contracting organization shall agree to follow these standards and to perform the contracted services in conformity with conflict of interest rules which shall include provisions requiring that in any matter where a person, corporation or other business entity in which any partner is in any way interested such interest is disclosed in advance and further, that no partner having such an interest may participate in a decision relating to such person, corporation or other business entity. The contracting organization shall also agree to a biennial audit and examination of its audited financial statements conducted by the auditor of the commonwealth.
- (c) The Massachusetts office of business development shall establish standard governance provisions to be required of regional economic development organizations that contract with the commonwealth as provided in this section. The standards shall include the

participation of local government officials and a broad range of regional representatives of businesses, nonprofit organizations, higher education institutions, planning professionals, organizations and economic and workforce development professionals.

Section 3K. (a) (1) The Massachusetts office of business development shall award up to 12 contracts for regional business development services. Each contract shall specify the municipalities which comprise the region to be served under that contract.

- (2) Eligible organizations shall be corporations, foundations, organizations or institutions that are exempt from federal taxation under section 501(c) of the Internal Revenue Code. Eligible organizations must have a primary focus on economic development. Governmental regional entities which serve as regional or district planning commissions under chapter 40B, regional employment boards, tourism councils under section 14 of chapter 23A, or entities which are a political subdivision of a municipality or wholly owned by a municipality shall not be eligible.
- (3) In order to be eligible to be a regional business development service, an applicant shall demonstrate the following:
  - (i) The applicant operates regionally and its service area or membership includes more than 10 contiguous cities or towns. The organization must describe the economic interdependency of its contiguous member municipalities and articulate a comprehensive vision for recognition of those municipalities as a self identified region with interrelated economic assets such as industrial base, public infrastructure, research, educational and financial institutions and environmental characteristics.

complies with the standards established by the Massachusetts office of
business development.
The applicant is engaged primarily in activities intended to promote job
and business retention, creation and attraction across all industry sectors
within its identified region.
The applicant has a history of collaboration with the area business
community, local officials, economic development organizations, higher
education institutions and other public and private organizations within
the identified region. The applicant must describe a plan for a formal
program encouraging participation in activities by a wide variety of
organizations, governments and businesses operating in the identified
region.
The applicant has received or has commitments to receive substantial
financial and in kind support from private sources or member
municipalities.
The applicant is capable of and agrees to provide services to the entire

(b) Preference in awarding contracts shall be given to organizations that have prior experience furnishing advice and assistance to businesses within or seeking to locate to the identified region, a working knowledge of the region, the region's industrial base, the region's demographics and the region's strengths and weaknesses and prior experience and involvement

region identified in the application.

with regional governmental entities, including but not limited to, regional competitiveness councils regional planning agencies, and regional employment boards.

- (c) Contracts for services entered into under this section shall include, but not be limited to, the following required services to be performed by the organization on behalf of the commonwealth:
  - (i) act as the primary contact for businesses seeking assistance from state or local governments, including those seeking to locate within the region or expand existing operations;
  - (ii) identify public funding sources for business activity and provide assistance in accessing public tax incentive programs;
  - (iii) identify potential sites for business development and maintain an inventory of key development parcels;
  - (iv) market the identified region in coordination with the Massachusetts marketing partnership established under section 13A and in compliance with the marketing materials developed by the partnership;
  - (v) furnish advice and assistance to businesses and industrial prospects which may locate in the region, existing businesses and industries, and persons seeking to establish new businesses or industries, and engage in related activities;
  - (vi) establish and maintain a network of public and private expertise related to regional assets, industry clusters, workforce and education opportunities and public tax and regulatory incentive and capital access programs;

(vii) partner with the Massachusetts office of business development representative to the region and representatives of quasi-public agencies and authorities engaged in economic development activities to exchange information and jointly provide direct consultation with businesses seeking to expand or locate to the region.

- (viii) act as the primary contact for the region for a business seeking state assistance and incentives in a location decision.
  - (ix)in partnership with the staff of the Massachusetts office of business development, assist member municipalities with economic development efforts related to business attraction and retention and with access to state economic development programs; and
  - (x) submit an annual report to the Massachusetts office of business development on the grantee's business development activities. The report shall include: a summary of the preceding year's program activities, objectives and accomplishments; a description of how the grantee's programs and marketing strategy aligns with the commonwealth's overall economic development and strategies; an analysis of how the grantee's involvement in promotion activities has generated prospective business expansion and relocation clients; and a summary of the grantee's efforts to obtain funds from local, private, and federal sources.
- (d) Contracts entered into under this section shall be for a term not greater than 3 years, and may provide for the renewal of the contract at the discretion of the Massachusetts office of business development, provided that the renewal shall be for a term not longer than 2 years.

Nothing in this subsection shall preclude a regional organization from re-applying to provide services under a new contract.

- (e) The Massachusetts office of business development shall develop a formula to determine funding for contractual reimbursements. That formula shall reflect demographic and economic indicators, including, but not limited to, population and the number of business establishments operating in the region, as well as an assessment of regional needs and the priorities of the statewide economic development plan created under section 16G of chapter 6A. The formula shall also reflect the significant need for increased economic activity in regions which include target areas as defined in section 2 of chapter 40H. Renewal contracts shall also provide for additional payments to reward achievement in reporting in compliance with performance measurements and to reward achievement of specific performance goals.
- (f) Organizations entering into contracts with the commonwealth under this section may enter into additional contracts with the commonwealth to provide additional regional services which do not constitute business assistance activities.
- (g) If MOBD determines through the request for proposals process that no organization meets the requirements set out in this section or a region is not served by any eligible regional economic development organization, then MOBD shall provide services under sections 3J and 3K.

#### Section 3L.

(a)The Massachusetts office of business development shall provide initial assistance to a business which contacts the office requesting service. The Massachusetts office of business development shall provide the business with information about the various regional economic

development organizations with which it has contracted and continue to serve as primary contact for that business until the business has established a relationship with a particular region. The Massachusetts office of business development shall notify all regional economic development organizations, on a nondiscriminatory basis, of business prospects that have expressed interest to the Massachusetts office of business development in moving to the commonwealth.

- (b) The Massachusetts office of business development shall coordinate activity among regional economic development organizations and between economic development organizations and the commonwealth's economic development agencies and initiatives (i) to ensure that initiatives led by the commonwealth or quasi-public economic development agencies receive information and advice from the regional economic development organizations, and (ii) to ensure that initiatives led by the regional economic development organizations receive information and advice from agencies within the executive branch and from quasi-public economic development agencies.
- (c) The Massachusetts office of business development shall support the secretary of housing and economic development in the creation of the statewide economic development plan prepared under section 16G of chapter 6A.
- **SECTION 20.** Section 4 of chapter 23A, as appearing in the 2008 Official Edition, is hereby amended by striking out the words "department of economic development" and inserting in place thereof the following words:- Massachusetts office of business development.
- **SECTION 21.** Said section 4 of said chapter 23A, as so appearing, is hereby amended by adding the following sentence: The Massachusetts office of business development shall

locate staff throughout the regions of the commonwealth in order to partner with the regional economic development organizations and establish efficient and rapid access for businesses and regional organizations to all state government and quasi-public business services.

**SECTION 22.** Section 5 of said chapter 23A, as so appearing, is hereby amended by striking out, in line 9, the words ", in the department of economic development".

**SECTION 23.** Section 6 of said chapter 23A, as so appearing, is hereby amended by striking out, in line 2, the words "of economic development".

**SECTION 24.** The first paragraph of said section 6 of said chapter 23A, as so appearing, is hereby amended by adding the following sentence:-

The director shall establish an advisory council that shall assist and advise the director on matters related to the administration and evaluation of the regional business development program created under section 3J.

**SECTION 25.** Section 10A of said chapter 23A, as so appearing, is hereby amended by striking out, in line 20, the words, "Said department" and inserting in place thereof the following:- The Massachusetts office of business development.

**SECTION 26.** Chapter 23A of the General Laws is hereby amended by striking out sections 13A and 13B, as so appearing, and inserting in place thereof the following 2 sections:-

Section 13A. For the purposes of sections 13A to 13Q, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Foreign offices", foreign offices for international trade within the international trade office.

"Partnership", the Massachusetts marketing partnership created in this section.

"Tourism", the office of travel and tourism.

In order to promote common, coordinated and concerted efforts on behalf of the commonwealth, there shall be within the executive office of housing and economic development, but not subject to the supervision or control of the executive office, the Massachusetts marketing partnership which shall coordinate marketing efforts on behalf of the commonwealth and shall oversee the activities of the agencies placed within it.

(a) The partnership shall consist of 11 partners who shall be: the secretary of housing and economic development, who shall chair the partnership; the director of the Massachusetts office of business development or the director's designee; the executive director of the Massachusetts Convention Center Authority or the executive director's designee; the executive director of the Massachusetts Port Authority or the executive director's designee; the executive director of the Massachusetts Alliance for Economic Development, or its successor organization; and 6 individuals appointed by the governor for terms of 5 years, as follows: 2 persons employed by a business that has a principal place of business in the commonwealth and that exports goods to other countries, 1 of whom shall be selected from a list of 3 names submitted by the Associated Industries of Massachusetts; 1 person who has significant experience with a public relations or advertising firm doing business in the commonwealth; 1 person who shall be on the faculty of a public or private business school in the commonwealth

who is experienced in international business; and 2 persons who shall represent a regional tourism council in the commonwealth outside of Suffolk County, Middlesex County and Norfolk County. Of the initial partners appointed by the governor, 3 shall serve a term of 2 years and 3 shall serve a term of 5 years.

At least 3 of the governor's 6 appointments shall reside outside of Suffolk County, Middlesex County and Norfolk County. Not more than 6 of the partners shall be members of the same political party. Each partner shall serve without compensation but may be reimbursed for actual and necessary expenses reasonably incurred in the performance of the partner's duties, including reimbursement for reasonable travel; provided, however that that such reimbursement shall not exceed \$500 annually. A person appointed to fill a vacancy in the office of a partner shall be appointed in a like manner and shall serve for only the unexpired term of the former partner. A partner shall be eligible for reappointment and may be removed by the governor for cause. The partnership shall annually elect 1 partner to serve as vice-chairperson.

(b) Eight partners shall constitute a quorum and the affirmative vote of a majority of partners present at a duly called meeting, if a quorum is present, shall be necessary for an action to be taken by the partnership. An action required or permitted to be taken at a meeting of the partnership may be taken without a meeting if all of the partners consent, in writing, to the action and that written consent is filed with the records of the minutes of the meetings of the partnership. Such consent shall be treated for all purposes as a vote at a meeting. Each partner shall make full disclosure, under subsection (c), of the partner's financial interest, if any, in matters before the partnership by notifying the state ethics commission, in writing, and the partner shall abstain from voting on a matter before the board in which the partner has a

financial interest, unless otherwise permitted under chapter 268A.

- (c) Chapters 268A and 268B shall apply to all ex officio partners or the partners' designees and employees of the agencies within the partnership. Chapters 268A and 268B shall apply to all other partners, except that the agencies within the partnership may purchase from, sell to, borrow from, loan to, contract with or otherwise deal with a person, corporation or other business entity in which any partner is in any way interested or involved; provided, however, that such interest or involvement is disclosed in advance to the partners of the partnership and recorded in its minutes; and provided, further, that no partner having such an interest or involvement may participate in a decision of the partnership relating to such person, corporation or other business entity. Employment by the commonwealth or service in an agency or political subdivision of the commonwealth shall not be deemed to be such an interest or involvement.
- (d) The partnership shall bi-annually elect 1 of its partners as treasurer and 1 of its partners as secretary. The secretary of the partnership shall keep a record of its proceedings and shall be custodian of all books, documents and papers filed by the partnership and of its minute book and seal. The secretary of the partnership shall cause copies to be made of all minutes and other records and documents of the partnership and shall certify that such copies are true copies and all persons dealing with the partnership may rely upon such certification.
- (e) Partners and employees of the agencies within the partnership having access to its cash or negotiable securities shall give bond to the partnership at its expense in such amounts and with such surety as the partnership may prescribe. The persons required to give bond may be included in 1 or more blanket or scheduled bonds.
- (f) Partners and officers who are not compensated employees of the partnership shall not be liable to the commonwealth, the executive office of housing and economic development

or any other person as a result of their activities, whether ministerial or discretionary, as such partners or officers except for willful dishonesty or intentional violations of law. Neither members of the partnership nor a person executing bonds or policies of insurance shall be personally liable on those bonds or policies or be subject to any personal liability or accountability by reason of the issuance of those bonds or policies. The partnership may purchase liability insurance for partners, officers and employees and may indemnify the partners against claims of others.

- (g) Upon the termination of the existence of the partnership, all right, title and interest in and to all of its assets and all of its obligations, duties, covenants, agreements and obligations shall vest in and be possessed, performed and assumed by the commonwealth.
- (h) An action of the partnership may take effect immediately and need not be published or posted unless otherwise provided by law. Meetings of the partnership shall be subject to section 11A 1/2 of chapter 30A, except that said section 11A 1/2 shall not apply to any meeting of partners in the partnership serving ex officio in the exercise of their duties as officers of the commonwealth so long as no matter relating to the official business of the partnership is discussed and decided at the meeting. The partnership shall be subject to all other sections of said chapter 30A, and records pertaining to the administration of the partnership shall be subject to section 42 of chapter 30 and section 10 of chapter 66. All moneys of the partnership shall be considered to be public funds for purposes of chapter 12A.
- 781 (i) The partnership shall be subject to section 16G of chapter 6A and section 56 of chapter 23A.

Section 13B. There shall be within the partnership the following offices: the office of travel and tourism, the Massachusetts international trade office and the commonwealth marketing office.

**SECTION 27.** Said chapter 23A is hereby amended by striking out section 13C, as amended by section 29 of chapter 25 of the acts of 2009, and inserting in place thereof the following section:-

Section 13C. The partnership shall have the power to:

- (1) adopt and amend by-laws, regulations and procedures for the governance of its affairs and the conduct of its business for the administration and enforcement of this sections 13A to 13Q, inclusive; provided, however, that regulations adopted by agencies within the partnership shall be adopted under chapter 30A;
  - (2) adopt an official seal and a functional name;
- (3) maintain offices at places within the commonwealth as it may determine and to conduct meetings of the partnership in accordance with the by-laws of the partnership;
- (4) enter into agreements and transactions with federal, state and municipal agencies and other public institutions and private individuals, partnerships, firms, corporations, associations and other entities on behalf of the partnership;
  - (5) sue and be sued in its own name, plead and be impleaded;
- 801 (6) act as the central entity and coordinating organization for marketing initiatives on 802 behalf of the commonwealth and to work in collaboration with governmental entities, regional

economic development organizations, bodies, centers, institutes and facilities to advance the commonwealth's interests and investments in travel and tourism, international trade and economic development;

- (7) appear in its own behalf before boards, commissions, departments or other agencies of municipal, state or federal government;
  - (8) obtain insurance;

- (9) apply for and accept subventions, grants, loans, advances and contributions from any source of money, property, labor or other things of value to be held, used and applied for its corporate purposes;
- (10) review and recommend changes in laws, rules, programs and policies of the commonwealth and its agencies and subdivisions to further the marketing of the commonwealth and economic development within the commonwealth;
- (11) enter into agreements with public and private entities that deal primarily with economic development, in order to distribute and provide leveraging of funds or services to further economic development in the commonwealth and promote overall economic growth within the commonwealth by fostering collaboration and investments in tourism and international trade initiatives in the commonwealth;
- 820 (12) provide and pay for such advisory services and technical assistance as may be 821 necessary or desired to carry out the purposes of this chapter;

(13) establish and collect such fees and charges as the department without further
appropriation shall determine to be reasonable and consistent with this sections 13A to 13Q,
inclusive; and to receive and apply revenues from fees and charges to the purposes of the
department or allotment by the commonwealth or any political subdivision of the
commonwealth;

- (14) disburse, appropriate, grant, loan or allocate funds for the purposes of investing in economic development initiatives as directed in sections 13A to 13Q, inclusive;
- (15) provide assistance to local entities, local authorities, public bodies, regional economic development organizations, and private corporations for the purposes of maximizing opportunities for economic development initiatives in the commonwealth;
- (16) prepare, publish and distribute, with or without charge, as the department may determine, such studies, reports and bulletins and other material as the department deems appropriate;
  - (17) exercise any other powers of a corporation organized under chapter 156B;
  - (18) develop a common Internet portal to be used by state agencies and state authorities to promote the commonwealth's programs providing business assistance and to promote economic development in the commonwealth;
  - (19) take any actions necessary or convenient to the exercise of any power or the discharge of any duty provided for by sections 13A to 13Q, inclusive;

(20) establish an advisory council to assist and advise the partnership on matters related to the commonwealth's business marketing efforts;

(21) enter into agreements or other transactions with any person including, without limitation, a public entity or other governmental instrumentality or agency in connection with the powers and duties provided to the partnership under sections 13A to 13Q, inclusive; and

(22) delegate any of the powers under this section to a director having charge of an agency within the partnership.

**SECTION 28.** Said chapter 23A, as appearing in the 2008 Official Edition, is hereby amended by striking out sections 13D and 13E and inserting in place thereof the following 15 sections:-

Section 13D. (a) The partnership and the agencies within the partnership shall, for the purposes of compliance with state finance law, operate as a state agency as defined in section 1 of chapter 29 and shall be subject to the laws applicable to agencies under the control of the governor including, but not limited to, chapter 7, chapter 7A, chapter 10 and chapter 29; provided, however, that the comptroller may identify additional instructions or actions necessary for the partnership to manage fiscal operations in the state accounting system and meet statewide and other governmental accounting and audit standards. Unless otherwise exempted by law or the applicable central service agency, the partnership shall participate in other available commonwealth central services including, but not limited, to the state payroll system under section 31 of chapter 29, and may purchase other goods and services provided by state agencies under the direction of the comptroller. The comptroller may chargeback the partnership for the transition and ongoing costs for participation in the state accounting and

payroll systems and may retain and expend such costs without further appropriation for the purposes of this section. The partnership shall be subject to section 5D of chapter 29 and subsection (f) of section 6B of chapter 29. This section shall not apply to authorities who are serving as partners of the partnership.

- (b) The office of the attorney general shall appear for the partnership in all suits and other civil proceedings in which the partnership is a party or interested, or in which the official acts and doings of the partnership are called into question, to the same extent and in the same manner as provided to the commonwealth and state departments, officers and commissions under section 3 of chapter 12. The partnership shall be generally considered to be an agency of the commonwealth for purposes of chapter 12.
- (c) The Massachusetts office of business development may provide staff support for the Massachusetts marketing partnership; provided, however, that the partnership shall contract with another public authority for the performance by that authority of core administrative functions, as determined by the secretary of housing and economic development which may include but shall not be limited to, human resources, financial management, information technology, legal, procurement and asset management, to minimize the administrative costs and expenses of the partnership.

Section 13E. There shall be within the partnership an office of travel and tourism which shall be under the supervision and control of an executive director. The powers and duties given to the executive director of the office of travel and tourism in this chapter and in any other general or special law shall be exercised and discharged subject to the direction, control and supervision of the partnership.

The executive director of the office of travel and tourism shall be appointed by the governor, and serve at the pleasure of the governor. The position of executive director of the office of travel and tourism shall be classified under section 45 of chapter 30 and the executive director of travel and tourism shall devote full time during business hours to the duties of the office of travel and tourism and shall give to the state treasurer a bond for the faithful performance of those duties.

The executive director of travel and tourism shall be the executive and administrative head of travel and tourism and shall be responsible for administering and enforcing the laws relative to travel and tourism and to any administrative unit of that office. Powers and duties given to an administrative unit of travel and tourism by a general or special law shall be exercised subject to the direction, control and supervision of the executive director of travel and tourism.

Section 13F. The office of travel and tourism shall serve as the principal agency for promoting the recreational, cultural, historic and scenic resources of the commonwealth to increase its desirability as a location for tourism, convention, travel and recreation-related activities by providing informational, marketing and technical assistance to public and private nonprofit entities organized for similar purposes.

Section 13G. The executive director of travel and tourism may, subject to appropriation and with the approval of the partnership, appoint and may, with like approval, remove all such employees as may be necessary to carry out the work of tourism. Unless otherwise provided by law, all such appointments and removals shall be made under chapter 31. The executive director

may, subject to appropriation and the laws and regulations pertaining to the employment of consultants, employ such consultants as the executive director may deem necessary.

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Section 13H. There shall be an advisory commission on travel and tourism to the partnership to develop budget recommendations and marketing strategies for the promotion of travel and tourism to the commonwealth. The executive director of travel and tourism shall convene the advisory commission quarterly. The advisory commission shall annually report its recommendations to the partnership not later than November 1. The advisory commission shall annually file its recommendations with the clerks of the senate and house of representatives not later than November 1. The membership of the commission shall annually elect a chairperson. The advisory commission shall have 30 members: 1 representative from each of the following organizations: the Massachusetts Restaurant Association, the Massachusetts Lodging Association, the Massachusetts Camping Ground Association, the New England Bus Association, the Massachusetts cultural council and the Massachusetts historical commission; 1 representative of a professional sports franchise located in the commonwealth, 2 representatives of the Massachusetts Visitor Industry Council; the executive director or the executive director's designee of each of the following regional tourism councils: the Berkshire Hills Visitors Bureau, the Bristol County Convention and Visitors Bureau, the Cape Cod Chamber of Commerce, the Franklin County Chamber of Commerce, the Greater Boston Convention and Visitors Bureau, the Worcester County Convention and Visitors Bureau, the Martha's Vineyard Chamber of Commerce, the Greater Merrimack Valley Convention and Visitors Bureau, the Mohawk Trail Association, the North of Boston Convention and Visitors Bureau, the Greater Springfield Convention and Visitors Bureau, the Plymouth County Development Council, Inc.,

the Nantucket Island Chamber of Commerce, the MetroWest Tourism and Visitor's Bureau, the Johnny Appleseed Trail Association, Inc., the Hampshire County Tourism and Visitor's Bureau and the following individuals, who shall not serve as chair: the commissioner of conservation and recreation or the commissioner's designee, the administrator of the highway division or the administrator's designee, the Massachusetts state coordinator of the United States National Park Service, and the house and senate chairs of the joint committee on tourism, arts and cultural development.

Members of this commission shall receive no compensation for their services, but each member shall be reimbursed the member's necessary expenses incurred while engaged in the performance of the member's duties. This commission shall annually, not later than November 1, make a report to the executive director and the secretary of housing and economic development, and may make such special reports as the commission or the executive director of tourism may deem desirable.

Section 13I. The office of travel and tourism may accept gifts or grants of money or property from any source, which shall be held in trust for the use of tourism by the treasurer of the partnership as custodian.

Section 13J. The following offices shall be within the office of travel and tourism: the Massachusetts film office, which shall be the official and lead agency to facilitate motion picture production and development within the commonwealth; the Massachusetts sports partnership, which shall be the official and lead agency to facilitate and attract major sports events and championships in the commonwealth; and the Massachusetts cultural council established under section 52 of chapter 10.

Section 13K. There shall be within the partnership a Massachusetts international trade office, which shall be under the supervision and control of an executive director. The executive director shall be appointed by the governor, and serve at the pleasure of the governor. The executive director shall devote his full time during business hours to the duties of the Massachusetts international trade office. The executive director of the international trade office shall be the executive and administrative head of the office and shall be responsible for administering and enforcing the laws relative to the office and to any administrative unit of the office.

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The executive director shall also serve as the Massachusetts international trade representative. The purpose of the Massachusetts international trade representative shall be to: (1) serve as the commonwealth's official point of contact with the federal government on matters related to international trade; (2) work with the executive office of housing and economic development and other appropriate state agencies to analyze proposed and enacted international trade agreements and provide an assessment of the impact of those agreements on the commonwealth's economy; (3) serve as the designated recipient of federal requests for the commonwealth to agree to be bound by investment, procurement, services or any other provisions of international trade agreements, including those which may infringe upon state law or regulatory authority reserved to the commonwealth; (4) serve as a liaison to the general court on matters of international trade policy oversight including, but not limited to, reporting to members of the general court on a regular basis on the status of ongoing international trade negotiations, international trade litigation, and dispute settlement proceedings with implications for existing state laws, state regulatory authority and international trade policy on the commonwealth's economy.

The international trade representative shall, within 30 days of receipt, forward any requests or communications received from the United States Trade Representative relative to any issue of international trade, including requests seeking the commonwealth's consent to be bound by international trade agreements, to the clerk of the house of representatives and the clerk of the senate, who shall promptly refer the communications or requests to the joint committee on economic development and emerging technologies. The joint committee shall, within 30 days of receipt, conduct a public hearing on any request seeking the commonwealth's consent to be bound by an international trade agreement. The joint committee may issue a report within 120 days of the public hearing including a resolution to the general court relative to the recommendations of the committee on whether the commonwealth should consent to the international trade agreement in question and memorializing the commonwealth's international trade representative and the governor to take appropriate measures within their power to advise the United States Trade Representative of the recommendations of the general court.

Section 13L. There shall be within the international trade office 1 or more foreign offices for international trade. The foreign offices may be located in any country that the executive director of the international trade office determines to be best suited as the location for the furthering of foreign trade opportunities for the businesses of the commonwealth. The foreign offices shall encourage and further trade between foreign businesses and businesses in the commonwealth. The foreign offices shall also promote investment opportunities in the commonwealth for foreign businesses in order to encourage the location and establishment of such businesses within the commonwealth. For the purposes of furthering foreign trade and investment, the foreign offices, subject to appropriation and approval by the executive director of the trade international office, may contract for such advertising and other communication

services as may be necessary. The foreign offices shall maintain an updated list of businesses in the commonwealth and foreign businesses which are or might become active in the import or export of their products and services. The executive director shall consult with Massachusetts office of business development and the regional economic development designated pursuant to section 3J in order to ensure that the businesses and assets of all regions of the commonwealth are included in such lists. The foreign office may also provide additional information and assistance to businesses in the commonwealth that desire to export their goods and services.

The foreign offices shall maintain and give suitable publicity to an updated list of available sites for the location of foreign based businesses in the commonwealth. The foreign offices may make available technical assistance to foreign businesses interested in the establishment of plants or facilities in the commonwealth.

The foreign offices shall, on a regular basis, make all foreign trade information available to the executive director of the international trade office, who shall publish and furnish such information to regional economic development organizations designated under section 3J and to businesses and corporations in the commonwealth which might be interested in, or benefit from the utilization of such information. The executive director of the international trade office may charge a fee not to exceed the actual printing costs for such information, except that no fee shall be charged to regional economic development organizations designated under section 3J.

Section 13M. There shall be a director of each foreign office appointed by the executive director of the international trade office, who shall be a person with at least 2 years of experience in international trade, having had administrative or business experience in the

country where the office is located, who shall be fluent in at least 2 languages and who may be a foreign national. The director shall not be subject to chapter 31 or section 9A of chapter 30.

Section 13N. The executive director of the international trade office may, subject to appropriation, enter into leases for office space as may be necessary and to purchase or lease equipment as may be needed for the operation of foreign offices.

Section 13O. The executive director of the international trade office may accept funds in the name of the international trade office and the foreign offices from private and public groups, agencies and persons, which shall be held in trust for use by the treasurer of the partnership as custodian.

Section 13P. The executive director of the international trade office and the director of any foreign office shall annually file a financial report with the clerks of the house and senate and the joint legislative committee on economic development and emerging technologies on the operation and activities of the office. The report shall include a complete evaluation of the results of the activities of the foreign offices and its effects on the business economy of the commonwealth, especially in the areas of the export of goods and services and in the location of foreign businesses in the commonwealth.

Section 13Q. The international trade office shall contract with the Massachusetts export center to provide technical assistance to companies operating in the commonwealth that export products to other countries.

Section 13R. The director may establish an advisory council to assist and advise the director on matters related to the administration and evaluation of the international trade programs provided through the office.

**SECTION 29.** Section 14 of said chapter 23A, as so appearing, is hereby amended by inserting after the word "Bureau", in line 11, the words:-, the MetroWest Tourism and Visitor's Bureau, the Johnny Appleseed Trail Association, Inc., the Hampshire County Tourism and Visitor's Bureau.

**SECTION 30.** Said section 14 of said chapter 23A, as so appearing, is hereby amended by striking out, in lines 17 and 18, the words "director of economic development" and inserting in place thereof the following words:- executive director of tourism.

**SECTION 31.** Said section 14 of said chapter 23A, as so appearing, is hereby further amended by striking out, in lines 55 and 56, the words ", subject to approval by the director of economic development" and inserting in place thereof the following words:- of tourism.

**SECTION 32.** Sections 15 to 28, inclusive, of chapter 23A of the General Laws are hereby repealed.

**SECTION 33.** Sections 39A to 39D, inclusive, of said chapter 23A are hereby repealed.

**SECTION 34.** Sections 46 to 55, inclusive, of said chapter 23A are hereby repealed.

SECTION 35. Chapter 23A of the General Laws, as appearing in the 2008 Official
Edition, is hereby amended by striking out section 56 and inserting in place thereof the
following section:-

Section 56. (a) The secretary of housing and economic development shall coordinate the quasi-public entities and public purpose agencies of the commonwealth as to their economic development projects, programs and plans.

- (b) The secretary shall aggregate the data submitted under subsection (i) of section 16G of chapter 6A and shall, not later than December 31, submit an annual report to the secretary of administration and finance, the house and senate committees on ways and means, the joint committee on economic development and emerging technologies, the joint committee on labor and workforce development, the joint committee on small business and community development and the joint committee on higher education. The report shall include an analysis of all public lending activities to businesses with an assessment of the economic impact of those activities and an analysis evaluating public lending to small businesses as defined in section 57 of this chapter.
- (c) In order to fully utilize all appropriate measures to provide risk capital to small businesses in the commonwealth the Massachusetts Growth Capital Corporation, the Massachusetts Development Finance Agency and the Massachusetts Technology Development Corporation may establish 1 or more small business investment corporations or special small business investment corporations as provided by the federal Small Businesses Equity Enhancement Act of 1992.
- (d) The books and records of the quasi-public entities and public purpose agencies of the commonwealth under this section shall be subject to a biennial audit by the auditor of the commonwealth and an annual audit conducted by an independent auditor. The results of both audits shall be published in conjunction with the publication of audited financial statements.

(e) The secretary of housing and economic development shall from time to time convene the Massachusetts Life Sciences Center created under chapter 23I, the Massachusetts clean energy technology center created under chapter 23J, the Massachusetts Technology Development Corporation created under chapter 40G, the Massachusetts Technology Park Corporation created under chapter 40J, and the Massachusetts Technology Transfer Center created under chapter 75, for the purpose of ensuring that: (1) the agencies' projects, programs and plans are coordinated and consistent with this section; (2) the agencies are sharing administrative functions for efficiencies and cost saving measures; (3) the agencies are sharing information that is beneficial to the growth and expansion of technology related companies in the commonwealth; and (4) the agencies are sharing best practices related to assisting technology related companies with debt and equity products and technical assistance.

**SECTION 36.** Subsection (a) of section 57 of said chapter 23A, as so appearing, is hereby further amended by striking out the definition of "small business" and inserting in place thereof the following definition:-

"Small business", a business entity, including its affiliates, that: (i) is independently owned and operated; (ii) has a principal place of business in the commonwealth; and (iii) if in a manufacturing industry, employs fewer than 500 full-time employees, if in a wholesale trade industry, employs fewer than 100 full-time employees or, if in any other industry, receives less than \$7,000,000 in annual receipts; provided, however, that for purposes of this definition, the industry of a business shall be primarily classified according to the Table of Small Business Size Standards of the Small Business Administration, including all exceptions to such standards as set forth in said table.

**SECTION 37.** Said section 57 of said chapter 23A, as so appearing, is hereby amended by striking out subsection (i) and inserting in place thereof the following 2 subsections:-

- (i) No loan or loans in an aggregate principal amount in excess of \$500,000 shall be provided to a borrower under the program and no small business borrower under the program shall be provided a loan under the program for passive real estate purposes.
- (j) Any financial institution desiring to become a participating financial institution shall execute an agreement in such form as the agency or its agent may prescribe, which agreement shall contain the terms and provisions set forth in subsections (a) to (i), inclusive and such other terms and provisions as the agency or its agent may deem necessary or appropriate.
- **SECTION 38.** Said chapter 23A is hereby amended by striking out section 58, as so appearing, and inserting in place thereof the following section:-
  - Section 58. The agency is hereby authorized to:

(a) enter into a contract, after a competitive bidding process, with an organization to act as the agent of the agency with respect to the administration of the program; provided, however, that the contract shall: (1) be for a period of 2 years with such provisions for extension or renewal of the contract as the agency may agree to with the administering agent; and (2) provide for compensation and reimbursement of the agent on terms the agency may deem appropriate for the administration of the program, for any expenses incurred by the administering agent in connection with its services as agent and for such other services as the agency may deem appropriate including, but not limited to, the use of the premises, personnel and personal property of the administering agent; provided, however, that the administering agent shall

submit annually to the agency for review and approval by the agency a prospective budget for the operations of the program, which once approved shall define the terms under which the administering agent shall be compensated for its services; provided, further that no organization shall be selected as the agent of the agency unless the organization:

- (i) is licensed to do business in, and maintains its primary headquarters in, the commonwealth; and
  - (ii) has a demonstrated history of lending in participation with community banks;
- (b) conduct an annual review and assessment of the performance of the administering agent in its capacity as agent for the agency; provided, however, that the annual review shall be based on whether the administering agent has satisfactorily met the terms and conditions of the contract and on the program's effectiveness in achieving its intended goals; provided further, that the contract between the agency and the administering agent shall be subject to the performance management system developed under section 16G of chapter 6A; provided further, that the agency shall require the administering agent to annually submit, within 90 days of the end of program's fiscal year, financial statements of the program audited in accordance with generally accepted accounting principles by a certified public accountant, which financial statements will contain such footnotes or other disclosures of the administration of the program as the certified public accountant preparing the same deems appropriate under generally accepted accounting principles; provided further, that the agency shall have the right, at the agency's expense, to have representatives or agents of the agency audit the books and records along with supporting documentation used to prepare an annual report under this subsection;

and provided further, that the annual report submitted by the administering agent shall be a public record;

- (c) within 45 days of the end of each of fiscal quarter for the program, the administering agent shall submit to the agency a quarterly report, which shall include the names of all participating financial institutions, a detailed listing of all outstanding loans made under the program, including a statement, for each loan, of the amount and per cent contribution of the borrower, financial institution and program to the loan loss reserves funded by the program; an accounting of all claims made on the loss reserves during such quarter; an accounting of the capital access fund and the loss reserves at the end of such quarter; of all credited accrued earnings or interest in the capital access fund and in the loss reserves during such quarter; and interim accounting of those costs and expenses for which the administering agent has been reimbursed; provided, however, that the quarterly report submitted by the administering agent shall be a public record;
- (d) make and publish rules and regulations respecting the implementation of the small business capital access program established by this section and any other rules and regulations necessary to fulfill the purposes of this section; and
- (e) do any and all things necessary or convenient to carry out its purposes and exercise the powers expressly given and granted in this section.
- SECTION 39. Said chapter 23A is hereby amended by striking out section 61, as so appearing, and inserting in place thereof the following section:-
  - Section 61. The Massachusetts office of business development may:

(a) enter into a contract, after a competitive bidding process, with an organization to act as the agent of the agency with respect to the administration of the program; provided, however, that said contract shall: (1) be for a period of 2 years with such provisions for extension or renewal of the contract as the agency may agree to with the administering agent; and (2) provide for compensation and reimbursement of the agent on terms the agency may deem appropriate for the administration of the program, for any expenses incurred by the administering agent in connection with its services as agent and for such other services as the agency may deem appropriate including, but not limited to, the use of the premises, personnel and personal property of the administering agent; provided, however, that the administering agent shall annually submit to the agency for review and approval by the agency a prospective budget for the operations of the program, which once approved shall define the terms under which the administering agent shall be compensated for its services; provided, further that no organization shall be selected as the agent of the agency unless the organization:

- (i) is licensed to do business in, and maintains its primary headquarters in, the commonwealth; and
  - (ii) has a demonstrated history of lending in participation with community banks;
- (b) conduct an annual review and assessment of the performance of the administering agent in its capacity as agent for the agency; provided, however, that the annual review shall be based on whether the administering agent has satisfactorily met the terms and conditions of the contract and on the program's effectiveness in achieving its intended goals; provided further, that the contract between the agency and the administering agent shall be subject to the performance management system developed under section 16G of chapter 6A; provided further,

that the agency shall require the administering agent to annually submit, within 90 days of the end of program's fiscal year, financial statements of the program audited in accordance with generally accepted accounting principles by a certified public accountant, which financial statements will contain such footnotes or other disclosures of the administration of the program as the certified public accountant preparing the same deems appropriate under generally accepted accounting principles; provided, further, that the agency shall have the right, at the agency's expense, to have representatives or agents of the agency audit the books and records along with supporting documentation used to prepare an annual report under this subsection; and provided, further, that the annual report submitted by the administering agent shall be a public record;

(c) within 45 days of the end of each fiscal quarter for the program, the administering agent shall submit to the agency a quarterly report, which quarterly report shall include the names of all participating financial institutions, a detailed listing of all outstanding loans made under the program, including a statement, for each loan, of the amount and per cent contribution of the borrower, financial institution, and program to the loan loss reserves funded by the program; an accounting of all claims made on the loss reserves during such quarter; an accounting of the capital access fund and the loss reserves at the end of such quarter; of all credited accrued earnings or interest in the capital access fund and in the loss reserves during such quarter; and interim accounting of those costs and expenses for which the administering agent has been reimbursed; provided, however, that the quarterly report submitted by the administering agent shall be a public record;

(d) make and publish rules and regulations respecting the implementation of the redevelopment access to capital program and any other rules and regulations necessary to fulfill the purposes of this section; and

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(e) do any and all things necessary or convenient to carry out its purposes and exercise the powers expressly given and granted in this section.

**SECTION 40.** Said chapter 23A is hereby amended by striking out section 62, as so appearing, and inserting in place thereof the following section:-

Section 62. There shall be a 10 person interagency permitting board within the Massachusetts office of business development. The members of the board shall be comprised of the state permit ombudsman who will serve as the chair of the interagency permitting board, the secretary of housing and economic development, the secretary of transportation, the secretary of energy and environmental affairs, the secretary of public safety and security, the director of the department of housing and community development, the director of business development, the director of the department of workforce development, the director of the office of consumer affairs and business regulation, and the executive director of the Massachusetts Development Finance Agency; or their designees. Six members shall be a quorum for the transaction of business. The chair shall communicate with municipal officials responsible for local review procedures to determine the municipal perspective on the proposed project, and to facilitate communication between the municipality and state agencies. The interagency permitting board shall consult with each regional office of the Massachusetts office of business development as well as each regional planning agency, and regional economic development organizations with which the Massachusetts office of business development has contracted under this chapter in

order to better serve local businesses. At the direction of the chair, the board shall meet no fewer than 8 times a year, and shall monitor the development of priority development sites under chapter 43D and investigate ways in which to expedite priority development site projects. The board shall evaluate state agency permit procedures and recommend changes for improved efficiency. The board shall administer the technical assistance grants program established in subsection (b) of section 3 of chapter 43D. The secretary of housing and economic development shall work with the chair of the interagency permitting board and senior staff members to develop a recommended format for an application form and procedure which shall be used by all executive offices when possible.

**SECTION 41.** Sections 8 to 15, inclusive, of chapter 23D of the General Laws are hereby repealed.

**SECTION 42.** Said chapter 23D is hereby further amended by striking out section 16, as appearing in the 2008 Official Edition, and inserting in place thereof the following section:

Section 16. There shall be established within the Massachusetts Growth Capital Corporation a separate fund to be known as the Employee-Ownership Revolving Loan Fund, the proceeds of which shall be used to provide low interest long term loans to individuals for the purchase of such individual's ownership interest in an employee-owned business. The fund shall consist of all monies designated for that fund by the board of directors of the Massachusetts Growth Capital Corporation in consultation with the director of the industrial services program. Said board shall administer the employee-ownership revolving loan fund program. The

application process, and the terms and conditions of approving such loans shall be determined

by the board in consultation with the director. Said Employee-Ownership Revolving Loan Fund shall be subject to the reporting and auditing requirements of section 56 of chapter 23A.

**SECTION 43.** Section 20 of said chapter 23D, as so appearing, is hereby amended by striking out, in lines 10 and 11, the words 'trustees of the economic stabilization trust' and inserting in place thereof the following words:- directors of the Massachusetts Growth Capital Corporation.

**SECTION 44.** Chapter 23F of the General Laws is hereby repealed.

**SECTION 45.** Section 1 of chapter 23G, as appearing in the 2008 Official Edition, is hereby amended by inserting after the definition of "governing body" the following definition:-

"Hospital", a nonprofit hospital within the commonwealth licensed by the department of public health; a nonprofit health maintenance organization within the commonwealth licensed by the commissioner of insurance; or an affiliated nonprofit corporation which is organized and operated for the benefit of, to perform 1 or more of the functions of or to carry out 1 or more of the purposes of 1 or more licensed nonprofit hospitals or health maintenance organizations, including operation of a nursing home, comprehensive gerontology facility or congregate care facility.

**SECTION 46.** Said section 1 of said chapter 23G, as so appearing, is hereby further amended by striking out the definition of "Institution" and inserting in place thereof the following definition:-

"Institution", a hospital or a nonprofit corporation organized to operate a facility or facilities that provide cultural or educational services; provided, however, that nothing in this

definition shall be construed to limit the power or authority of the Agency to provide financing to a person which is otherwise authorized.

**SECTION 47.** Section 2 of said chapter 23G, as so appearing, is hereby amended by striking out, in line 12, the words "director of economic development" and inserting in place thereof the following words:- secretary of housing and economic development.

**SECTION 48.** Subsection (b) of said section 2 of said chapter 23G, as so appearing, is hereby further amended by striking out the sixth sentence and inserting in place thereof the following sentence:- The secretary of housing and economic development shall serve as chairperson.

**SECTION 49.** Clause (16) of section 3 of chapter 23G, as so appearing, is hereby amended by adding the following words:-; provided, further, that the agency shall publish and disseminate through its website each fiscal year a schedule of fees or a methodology for determining fees to be charged to institutions under this chapter, which shall result in similar charges for similarly-situated projects, regardless of the size of the participating institution.

**SECTION 50.** Said section 3 of said chapter 23G, as so appearing, is further amended by inserting, after clause (33), the following clause:-

(34) to make loans, including working capital and contract based loans, provide guarantees, loan insurance or reinsurance or otherwise provide financing or credit enhancing devices for the operation of companies which have a principal place of business in the commonwealth, including but not limited to loans to lending institutions under terms and conditions requiring the proceeds of such loans to be used by such lending institutions for the making of loans for the operation of companies.

**SECTION 51.** Said chapter 23G is hereby amended by striking out section 27, as so appearing, and inserting in place thereof the following section:-

Section 27. (a) There is hereby established and placed within the agency the Emerging Technology Fund, referred to in this section and section 28 as the fund, to which shall be credited appropriations, bond proceeds or other monies authorized by the general court and specifically designated to be credited to the fund, such additional funds as are subject to the direction and control of the agency, pension funds, federal grants or loans or private investment capital which may properly be applied in furtherance of the objectives of the fund, proceeds from the sale of qualified investments secured or held by the fund, fees and charges imposed relative to the making of qualified investments, as the same shall be defined and approved under rules approved by the advisory committee created under section 28 for the fund, secured or held by the fund, and other monies which may be available to the agency or the advisory committee for the purposes of the fund from another source or sources. The agency shall hold the fund in an account or accounts separate from other funds or accounts and shall manage the fund on behalf of the advisory committee, under rules and policies established by the advisory committee.

- (b) The agency, on behalf of the advisory committee, shall invest and reinvest the fund and the income of the fund, except as provided in this section, as follows:
  - (1) in the making of qualified investments, under rules approved by the advisory committee;
    - (2) in defraying the ordinary and necessary expenses of administration and operation associated with the fund;

(3) in the investment of funds not required for immediate disbursement in the purchase of such securities as may be lawful investments for fiduciaries in the commonwealth:

- (4) for the payment of binding obligations associated with such qualified investments which are secured by the fund as the obligations become payable; and
- (5) for the payment of principal or interest on qualified investments secured by the fund or the payment of a redemption premium required to be paid when such qualified investments are redeemed prior to maturity; provided, however, that monies in the fund shall not be withdrawn at any time in such an amount as would reduce the amount of the fund to less than the minimum requirement established jointly by the agency and advisory committee, except for the purpose of paying binding obligations associated with qualified investments which are secured by the fund as the obligations become payable.
- (c) The fund shall be held and applied by the agency, on behalf of the advisory committee, to make qualified investments designed to advance the following public purposes:
  - (1) to stimulate increased financing for new, renovated or improved manufacturing, research and development and related facilities and financing for the operations of emerging technology companies in the commonwealth by leveraging private financing for highly, productive state-of-the-art facilities or for the operations of emerging technology companies, which will lead to increased and more rewarding employment opportunities in the commonwealth by providing financing related to such facilities including, without limitation, financing of the construction or expansion of

such facilities, including specialized real estate improvements and specialized equipment for those facilities; and financing for the operations of emerging technology companies; and

- (2) to make matching grants to universities, colleges, public instrumentalities, companies and other entities to induce the federal government, industry and other grantfunding sources to fund advanced research and development activities in new and emerging technologies and new application of existing technologies in the commonwealth, so as to serve to increase and strengthen the commercial and industrial base of the commonwealth and the economic development and employment opportunities related to the commercial and industrial base;
- (3) to provide bridge financing to universities, colleges, public instrumentalities, companies and other entities in anticipation of the receipt of grants of the type described in clause (2) awarded or to be awarded by the federal government, industry or other sources;
- (4) to provide low or no interest equipment loans targeted to companies within the defense technology and homeland security sector particularly those that are seeking to become more competitive against out-of-state companies;
- (5) to make grants to the Massachusetts Technology Transfer Center, established by section 45 of chapter 75, to fund activities that facilitate the transfer of technology from the commonwealth's research institutions to the commonwealth's emerging technology industries, for productive use by such industries and to make targeted investments in proof of concept funding for emerging technologies; and

(6) to provide matching grants in the field of marine science technology for companies in the commonwealth that receive small business innovation research or small business technology transfer grants from the small business administration. The matching award amount shall be the lesser of \$20,000 or 15 per cent of the small business innovation research or small business technology transfer grant. There shall be a maximum of \$60,000 available per company, including affiliates, per calendar year allocated on a competitive basis, contingent upon the availability of funds. The matching funds shall be used for product development and commercialization.

The agency shall make no such qualified investment under clause (1) of subsection (b) unless the advisory committee finds that, to the extent possible, said qualified investment is such that a definite benefit to the economy of the commonwealth may reasonably be expected as a result. In addition, the agency shall make no such qualified investment under said clause (1) of said subsection (b) unless such qualified investment is in conformity with rules approved by the advisory committee.

Said rules shall define which industries within the commonwealth shall be considered emerging technology industries for purposes of this section, provided that "emerging technology industries" shall include industries employing new or state-of-the-art technology in biotechnology, marine science technology, pharmaceuticals, defense and homeland security-related technologies, advanced materials, electronics, nanotechnology, environmental, medical device, information technology, plastics and polymers, telecommunications industries involved in the research and development of state-of-the-art medication delivery devices or any other technological field or industry which the advisory committee has classified or shall classify as an emerging technology. Said rules shall also set the terms and conditions for investments

which are to constitute qualified investments, which may include, without limitation, loans, working capital and contract based loans, guarantees, loan insurance or reinsurance, equity investments, grants made only under clauses (2) and (5) of subsection (c), or other financing or credit enhancing devices, as made by the agency directly or on its own behalf or in conjunction with other public instrumentalities, or private institutions, or the federal government; provided, however, that said rules shall provide that each such qualified investment made under clause (1) of said subsection (c) shall involve a transaction with the participation of at least 2 at-risk private parties.

Said rules shall, in addition, set forth the terms, procedures, standards and conditions which the agency shall employ to identify qualified applications, process applications, make investment determinations, safeguard the fund, advance the objective of increasing employment opportunities, oversee the progress of qualified investments and secure the participation of other public instrumentalities, private institutions, or the federal government in such qualified investments; provided, however, that said rules shall provide that each recipient of a qualified investment shall be required to pay a fee as a condition of such receipt, which fee may take the form of points, an interest rate premium or a contribution of warrants or other form of equity or consideration to the fund as prescribed by the advisory committee; and provided, further, that said rules shall provide for negotiated agreements between the agency and each recipient of a qualified investment regarding the terms and conditions by which the fund's support of a recipient could be reduced or withdrawn.

(d) The agency or the advisory committee may solicit investments by private institutions or investors in the activities of the fund and may reach agreements with such private institutions or investors regarding the terms of such investments including, without limitation, the rights of

such investors to participate in the income or appropriation of the fund. To help secure investments by private institutions or investors in the activities of the fund, the advisory committee may develop a proposal relative to the creation of a separate investment entity which would allow for the commingling of the resources of the fund with the maximum participation by such private institutions or investors in a manner which is consistent with the public purpose of the fund and under terms and conditions calculated to protect and preserve the assets of the fund; provided, however, that if the creation or operation of such a separate entity as proposed by the advisory committee would require additional or clarifying amendments to the enabling act of the agency, said proposal shall include proposed statutory language.

- (e) Copies of the approved rules, and modifications to the rules, shall be submitted to the chairs of the house and senate committees on ways and means and the joint committee on economic development and emerging technologies and the clerks of the house of representatives and senate.
- (f) Qualified investment transactions undertaken by the agency on behalf of the advisory committee under this section shall not, except as specified in this section, be subject to chapter 175, and shall be payable solely from the Emerging Technology Fund, established by this section and shall not constitute a debt or pledge of the faith and credit of the commonwealth, the agency or any subdivision of the commonwealth.
- (g) The agency, on behalf of the advisory committee, shall not make an expenditure from or commitment of the assets of the fund, including, without limitation, the making of qualified investments secured by the fund, if making such a qualified investment would reduce the amount of the fund below the minimum requirement established by law, unless the agency, at the time of making of such qualified investment, deposits in the fund from the proceeds of

that qualified investment or from any fees and charges imposed relative to the making of qualified investments, or otherwise, an amount which, together with the amount in the fund, shall not be less than the minimum requirement; provided, however, that at no time shall the minimum requirement of the fund be less than the maximum amount of principal and interest becoming due in the current and succeeding fiscal year of the agency on all outstanding bonds and other obligations which are secured by the fund or such greater amount as may be set forth in the rules governing the fund.

**SECTION 52.** Said chapter 23G is hereby amended by striking out section 28, as so appearing, and inserting in place thereof the following section:-

Section 28. (a) There is hereby established an advisory committee relative to the fund consisting of the director of the Massachusetts office of business development, the director of the John Adams Innovation Institute, the president of the Massachusetts Technology

Development Corporation, and 6 other persons, 3 of whom shall be appointed by the governor and 3 of whom shall be appointed by the board of the agency; provided, however, that the director of the John Adams Innovation Institute, and the president of the Massachusetts

Technology Development Corporation may designate another person to act in such member's place for a particular purpose, including the right to attend and vote at a meeting of the advisory committee; provided, further, that at least 1 member appointed by the governor shall be a representative of an emerging technology industry, at least 1 member appointed by the governor shall have knowledge of financing of emerging technology companies, and at least 1 member shall have knowledge of technology transfer and commercialization activities at research institutions; and provided, further, that at least 1 member appointed by the board of the agency shall be a representative of an emerging technology industry, and at least 1 member

appointed by the board of the agency shall have knowledge of financing of emerging technology companies and 1 member appointed by the board of the agency shall be a member of the agency's board of directors. The executive director of the Massachusetts Technology Transfer Center shall serve as an ex-officio member of the advisory committee.

Each appointed member of the advisory committee shall serve for a term of 3 years or until such member's successor is appointed; provided, however, that of those initially appointed, 1 of each the governor's appointees and the board of the agency's appointees shall serve for a term of 1 year, 1 of each of the governor's appointees and the board of the agency's appointees shall serve for a term of 2 years, and 1 of each the governor's appointees and the board of the agency's appointees shall serve for a term of 3 years. A person appointed to fill a vacancy on the advisory committee shall be appointed in a like manner and shall be eligible for reappointment. A member of the advisory committee appointed by the governor may be removed by the governor for cause. A member of the advisory committee appointed by the board of the agency may be removed by the board of the agency for cause.

- (b) The members shall annually elect a chairman and vice chairman and shall adopt bylaws governing the affairs of the advisory committee. Five members of the advisory committee
  shall constitute a quorum and the affirmative vote of a majority of the members present and
  eligible to vote at a meeting shall be necessary for an action to be taken by the advisory
  committee; provided, however, that no vacancy in the membership of the advisory committee
  shall impair the right of a quorum to exercise the powers of the advisory committee.
- (c) The members shall serve without compensation, but each member shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties.

(d) The advisory committee may meet as often as the members shall decide; provided, however, that it shall meet at least once in each calendar quarter and its approval shall be necessary for an expenditure from or commitment of the assets of the fund or entry into contracts of the type specified in subsection (g).

- (e) The advisory committee may, by majority vote, elect, in its discretion, to delegate some or all of the committee's approval rights to the board or the staff of the agency; provided, that, any such delegation may be revoked at any time by majority vote of the advisory committee.
- (f) The agency shall manage the qualified investments made from the fund on behalf of the advisory committee including, without limitation, the closing, servicing, monitoring, underwriting, and where appropriate, the enforcement of rights with respect to such management and shall provide such staff and supporting assistance as deemed appropriate by the board of directors of the agency to enable the advisory committee to discharge its duties in a manner consistent with its public purpose. Subsection (d), subsections (f) to (i), inclusive, and subsection (l) of section 2 of this chapter shall also apply to the members and affairs of the advisory committee created under this section.
- (g) The advisory committee and the agency are encouraged to award 1 or more contracts with regard to the management of the fund, which may provide performance-based incentives, with regard to such management.
- SECTION 53. Chapter 23G of the General Laws is hereby amended by adding the following section:-

Section 44. The agency shall be subject to section 16G of chapter 6A and section 56 of chapter 23A.

SECTION 54. Clause (7) of subsection (a) of section 4 of chapter 231 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word "document", in line 35, the following words:-; provided, however, that the center shall contract with another public authority for the performance by that authority of core administrative functions, as determined by the secretary of housing and economic development which may include but shall not be limited to, human resources, financial management, information technology, legal, procurement and asset management, to minimize the administrative costs and expenses of the center.

**SECTION 55.** Subsection (d) of section 6 of said chapter 23I, as so appearing, is hereby amended by inserting after the figure "75", in line 82, the following words:- to fund activities that facilitate the transfer of technology from the commonwealth's research institutions to the commonwealth's life science industries, for productive use by such industries and to make targeted investments in proof of concept funding for emerging technologies.

**SECTION 56.** Section 12 of said chapter 23I, as so appearing, is hereby amended by striking out, in line 9, the word "and" and inserting in place thereof the following words:- the executive director of the Massachusetts Technology Transfer Center and.

**SECTION 57.** Chapter 23I of the General Laws is hereby amended by adding the following section:

Section 18. The center shall be subject to section 16G of chapter 6A and section 56 of chapter 23A.

1515	<b>SECTION 58.</b> Section 2 of chapter 23J of the General Laws, as so appearing, is hereby
1516	amended by striking out, in line 62, the words "his designee shall serve as chairperson" and
1517	inserting in place thereof the following words:- the secretary's designee and the secretary of
1518	housing and economic development, or the secretary's designee shall serve as co-chairs.
1519	SECTION 59. Section 3 of said chapter 23J, as so appearing, is hereby amended in by
1520	inserting after the word "chapter;", in line 30, the following words:- provided, however, that the
1521	center shall contract with another public authority for the performance by that authority of core
1522	administrative functions, as determined by the secretary of housing and economic development
1523	which may include but shall not be limited to, human resources, financial management,
1524	information technology, legal, procurement and asset management, to minimize the
1525	administrative costs and expenses of the center.
1526	SECTION 60. Chapter 23J of the General Laws is hereby amended by adding the
1527	following section:-
1528	Section 9. The center shall be subject to section 16G of chapter 6A and section 56 of
1529	chapter 23A.
1530	SECTION 61. The General Laws are hereby amended by inserting after chapter 23J the
1531	following chapter:-
1532	CHAPTER 23K
1533	The Health and Educational Facilities Authority
1534	Section 1. This chapter may be referred to and cited as the "Health and Educational

Facilities Authority Act."

Section 2. In this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Authority", the Health and Educational Facilities Authority created by section 3.

"Bonds" or "revenue bonds", revenue bonds of the authority issued under this chapter, including revenue refunding bonds, notwithstanding that the same may be secured by any federally guaranteed security, whether acquired by the authority or by a participating institution, or by mortgage, the full faith and credit or by any other lawfully pledged security of 1 or more participating institutions.

"Cost", as applied to a project or any portion thereof financed under this chapter embraces all or any part of the cost of construction, acquisition, alteration, enlargement, reconstruction and remodeling of a project including all lands, structures, real or personal property, rights, rights of way, air rights, franchises, easements and interests acquired or used for or in connection with a project, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to, during and for a period after completion of such construction and acquisition, reasonably required amounts to make the project operational, provisions for reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements, the cost of architectural, engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing the project and such other expenses as may be necessary or incident to the construction and

acquisition of the project, the financing of such construction and acquisition and the placing of the project in operation.

"Cultural institution", a nonprofit cultural or scientific institution within the commonwealth with respect to which the authority finds that the institution is a major regional resource, that it provides educational services to candidates for academic degrees for credit at other institutions or resources for research by scholars holding academic degrees or other education at an advanced level, and that it has demonstrated broad community support through giving for capital or current purposes.

"Federally guaranteed security", any security, investment or evidence of indebtedness which is either directly or indirectly, insured or guaranteed, in whole or in part, as to the repayment of principal or interest or both by the United States or any instrumentality of the United States.

"Federally insured project loan", a loan to finance or refinance the cost of a project for an institution which is either directly or indirectly, insured or guaranteed, in whole or in part, as to the repayment of the principal or interest or both by the United States or an instrumentality of the United States, or a commitment by the United States or an instrumentality of the United States to so insure or guarantee such a loan.

"Hospital", a nonprofit hospital within the commonwealth licensed by the department of public health; or a nonprofit health maintenance organization within the commonwealth licensed by the commissioner of insurance; or an affiliated nonprofit corporation which is organized and operated for the benefit of, to perform 1 or more of the functions of, or to carry out 1 or more of the purposes of 1 or more licensed nonprofit hospitals or health maintenance

organizations, including operation of a nursing home, comprehensive gerontology facility or congregate care facility; or any other nonprofit charitable institution in the commonwealth not otherwise eligible to participate under this chapter; provided, however, that such other nonprofit charitable institution may only undertake the financing and construction or acquisition of a project or undertake the refunding or refinancing of obligations or of a mortgage or of advances to the extent that such projects, obligations, mortgages, or advances consist of or result from the purchase of energy or from energy conservation or related projects of such other nonprofit charitable institution; and provided further, that such other nonprofit charitable institution participates in or is a member of a group power purchasing program organized and administered by or on behalf of the authority.

"Institution", a hospital or a nonprofit corporation organized to operate a facility or facilities that provide cultural or educational services, including but not limited to an institution for higher education, a school for the developmentally disabled, or a cultural institution.

"Institution for higher education", a public or a private, nonprofit educational institution within the commonwealth authorized by law to provide a program of education beyond the high school level, or any organization affiliated therewith; provided, that for the purposes of this definition an "organization affiliated" with such educational institution shall be any organization or association, in any form, the activities of which are a part of the activities of such educational institution and are subject to regulation by the trustees or other governing body of such educational institution, or any research foundation, teaching hospital and associated clinics, or other research or educational organization the operation of which in conjunction with such educational institution is approved by the trustees or other governing body of such educational institution, or any other entity whose activities are approved by the trustees or other governing

body of such educational institution as furthering the purposes of the educational institution, or, in the case of a public institution for higher education, the advisory committee on education policy established under section 2 of chapter 15A.

"Participating cultural institution", a cultural institution which, under this chapter, undertakes the financing and construction or acquisition of a project or undertakes the refunding of refinancing of obligations or of a mortgage or of advances as provided in this chapter.

"Participating hospital", a hospital which, under this chapter, undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of obligations or of a mortgage or of advances as provided in this chapter.

"Participating institution", a participating hospital or other participating nonprofit corporation organized to operate a facility or facilities that provide cultural or educational services, including but not limited to a participating institution for higher education, a participating school for the developmentally disabled, or a participating cultural institution; provided, however, that 'participating institution' shall also include any institution authorized to borrow on a tax-exempt basis through the Massachusetts Development Finance Agency under chapter 23G.

"Participating institution for higher education", an institution for higher education which, under this chapter, undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of obligations or of a mortgage or of advances as provided in this chapter.

"Participating school for the developmentally disabled", a school for the developmentally disabled which, under this chapter, undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of obligations.

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"Project", in the case of a participating institution for higher education, participating institution for the developmentally disabled or other participating institution that offers residences to students, a structure or structures suitable for use as a dormitory or other multiunit housing facility for students, faculty, officers or employees, a dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, maintenance facility, storage or utility facility and other structures or facilities related to any of those structures or required or useful for the instruction of students or the conducting of research or the operation of an institution for higher education or participating institution for the handicapped or other participating institution, including parking and other facilities or structures essential or convenient for the orderly conduct of such institution for higher education or participating institution for the developmentally disabled or other participating institution; provided, however, that "project" shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended as well as any furnishings, equipment, machinery and other similar items necessary or convenient for the operation of an institution of higher education or participating institution for the handicapped or other participating institution, whether or not such items are related to a particular facility or structure financed under this chapter; provided, however, that "project" shall not include such items as books, fuel, supplies or other items the cost of which are customarily deemed to result in a current operating charge, and shall not include any facility

used or to be used for sectarian instruction or as a place of religious worship nor any facility which is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination; provided, further, that "project" shall include, in the case of a participating hospital, a structure or structures suitable for use as a hospital, clinic, comprehensive gerontology facility, nursing home, or other health care facility, laboratory, laundry, nurses or interns residence or other multi-unit housing facility for staff, employees, patients or relatives of patients admitted for treatment in such hospital, or for the aged, doctors office building, administration building, research facility, maintenance, storage or utility facility and other structures or facilities related to any of the foregoing or required or useful for the operation of a hospital, including parking and other facilities or structures essential or convenient for the orderly conduct of such hospital, and shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended and shall further include any furnishings, equipment, machinery and other similar items necessary or convenient for the operation of a hospital, whether or not such items are related to a particular facility or structure financed under this chapter, and may also include the issuance of tax exempt debt instruments for working capital and for the providing of such items as fuel, supplies or other items the cost of which are customarily deemed to result in a current operating charge; and in the case of a particular cultural institution, a structure or structures suitable for its purposes, whether or not to be used to provide educational services, or research resources; provided, further, that "project" shall also include supporting facilities, landscaping, site preparation, furniture, equipment, machinery and other related items and shall further include any furnishings, equipment, machinery and other similar items necessary or

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convenient for the operation of a cultural institution, whether or not such items are related to a particular facility or structure financed under this chapter, but shall not include books, works of art, or other items for display or exhibition, or items the cost of which are customarily deemed to result in a current operating charge; provided, further, that "project" may include any combination of 1 or more of the foregoing undertaken jointly by 1 or more participating institutions with each other or with other parties; and, notwithstanding anything in this definition to the contrary, "project" may also include any capital or operating expenditure which may legally be made by any participating institution and the thing produced or acquired by such expenditure.

"School for the developmentally disabled", a nonprofit primary, secondary or post-secondary school within the commonwealth which: (i) serves students, at least 70 per cent of whom are developmentally disabled, as determined by 1 or more appropriate educational, rehabilitation, medical or mental health authorities; (ii) is accredited by a recognized accrediting body; and (iii) is determined by the authority to be a major resource of benefit to the developmentally disabled.

"Health and Educational Facilities Authority". The authority is constituted a public instrumentality and the exercise by the authority of the powers conferred by this chapter shall be deemed and held to be the performance of an essential public function. The authority shall consist of 9 members, to be appointed by the governor, who shall be residents of the commonwealth, 1 of whom shall be the secretary of housing and economic development and not

more than 5 of whom shall be members of the same political party. At least 2 of the members

Section 3. (a) There is hereby created a body politic and corporate to be known as the

shall be trustees, directors, officers or employees of institutions for higher education, at least 2 shall be trustees, directors, officers or employees of hospitals, at least 1 shall be a person having a favorable reputation for skill, knowledge and experience in the field of state and municipal finance, either as a partner, officer or employee of an investment banking firm which originates and purchases state and municipal securities, or as an officer or employee of an insurance company or bank whose duties relate to the purchase of state and municipal securities as an investment and to the management and control of a state and municipal securities portfolio, and at least 1 shall be a person having a favorable reputation for skill, knowledge and experience in the building construction field. Upon the expiration of the term of any member, a successor shall be appointed for a term of 7 years. The governor shall fill any vacancy for the remainder of the unexpired term. Any member of the authority may be removed by the governor for misfeasance, malfeasance or willful neglect of duty or other cause after notice and a public hearing unless such notice and hearing shall be expressly waived in writing.

- (b) The secretary of the executive office of housing and economic development shall serve as the chairman of the authority. The authority shall annually elect 1 of its members as vice chairman. It may appoint an executive director and assistant executive director, who shall not be members of the authority, who shall serve at the pleasure of the authority. They shall receive such compensation as shall be fixed by the authority.
- (c) The executive director or assistant executive director or other person designated by resolution of the authority shall keep a record of the proceedings of the authority and shall be custodian of all books, documents and papers filed with the authority, the minute book or journal of the authority, and its official seal. The executive director or assistant executive director or other person may cause copies to be made of all minutes and other records and

documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates.

- (d) Five members of the authority shall constitute a quorum. The affirmative vote of a majority of all the members of the authority shall be necessary for any action taken by the authority. A vacancy in the membership of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. An action taken by the authority under this chapter may be authorized by resolution at a regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted.
- (e) Before the authority issues revenue bonds under this chapter, the chairman, vice chairman, executive director and assistant executive director and any other member of the authority authorized by resolution of the authority to handle funds or sign checks of the authority shall execute a surety bond in the penal sum of \$50,000, or in lieu thereof the chairman shall obtain a blanket position bond covering the executive director and every member and other employee of the authority in the penal sum of \$50,000. Each such bond shall be conditioned upon the faithful performance of the duties of the principal or the members, executive director and other employees, as the case may be, shall be executed, by a surety company authorized to transact business in the commonwealth as surety, shall be approved by the attorney general and shall be filed in the office of the state secretary. The cost of each such bond shall be paid by the authority.

(f) The members of the authority shall receive no compensation for the performance of their duties under this chapter but each member shall be paid the member's necessary expenses incurred while engaged in the performance of the member's duties.

(g) A member, officer, agent or employee of the authority who, directly or indirectly, has a financial interest in a property to be included in, or a contract for property or materials to be furnished or used in connection with, a project of the authority, shall be punished by a fine of not less than \$50 nor more than \$1,000, or by imprisonment for not more than 1 month, or both.

(h) Members of the authority shall be considered state employees for the purposes of chapters 268A and 268B; provided, however, that notwithstanding subsection (g) or any other law to the contrary, it shall not be or constitute a conflict of interest or violation of paragraph (g) or any other law for a trustee, director, officer or employee of a participating institution or for a person having the required favorable reputation for skill, knowledge and experience in state and municipal finance or for a person having the required favorable reputation for skill, knowledge and experience in the building construction field to serve as a member of the authority; provided, further, that;

(1) in each case to which this subsection is applicable, such trustee, director, officer or employee of such participating institution abstains from discussion, deliberation, action and vote by the authority in specific respect to an undertaking under this chapter in which such participating institution has an interest;

(2) such person having the required favorable reputation for skill, knowledge and experience in state and municipal finance abstains from discussion, deliberation, action and vote by the authority in specific respect to any sale, purchase or ownership of bonds

of the authority in which the investment banking firm or insurance company or bank of which such person is a partner, officer or employee has a past, current or future interest; or

(3) such person having the required favorable reputation for skill, knowledge and experience in the building construction field abstains from discussion, deliberation, action and vote by the authority in specific respect to construction or acquisition of a project of the authority in which a partnership, firm, joint venture, sole proprietorship or corporation of which such person is an owner, venturer, participant, partner, officer or employee who has a past, current or future interest.

Section 4. The purpose of the authority shall be to assist institutions in the acquisition, construction, financing and refinancing of projects. For that purpose the authority may:

- (a) adopt by-laws for the regulation of its affairs and the conduct of its business;
- (b) adopt an official seal and alter the same at its pleasure;
- (c) maintain an office at such place or places as it may designate;
- (d) sue and be sued in its own name, plead and be impleaded;
- (e) determine the location and character of a project to be financed under this chapter, and construct, reconstruct, remodel, maintain, manage, enlarge, alter, add to, repair, operate, lease, as lessee or lessor, and regulate the same, enter into contracts for any or all of such purposes, enter into contracts for the management and operation of a project, and designate a participating institution as its agent to determine the location and character of a project undertaken by such participating institution under this chapter and, as the agent of the authority,

construct, reconstruct, remodel, maintain, manage, enlarge, alter, add to, repair, operate, lease, as lessee or lessor, and regulate the same, and, as the agent of the authority, enter into contracts for any or all of such purposes, including contracts for the management and operation of such project;

- (f) issue bonds, bond anticipation notes and other obligations of the authority for any of its corporate purposes, and fund or refund bonds, bond anticipation notes and other obligations as provided in this chapter;
- (g) generally, fix and revise and charge and collect rates, rents, fees and charges for the use of and for the services furnished or to be furnished by a project or any portion of a project and contract with any person, partnership, association or corporation or other body public or private in respect thereof and designate a participating institution as its agent to fix, revise, charge and collect such rates, rents, fees and charges and make such contracts;
- (h) establish rules and regulations for the use of a project or any portion of a project and designate a participating institution as its agent to establish rules and regulations for the use of a project in which such participating institution is participating;
- (i) require, at the expense directly or indirectly of an institution intending to participate in a project, a report on the financial feasibility of such project to be financed; provided, however, that the report of an independent accountant or accounting firm or financial expert employed or selected by such institution with the approval of the authority shall be deemed to satisfy the requirement of such report, if such independent accountant, accounting firm or financial expert has demonstrated capability of preparing such financial feasibility reports; and

provided, further, that the authority shall not unreasonably or arbitrarily withhold such approval and may promulgate regulations stipulating the form and content of such report;

- (j) employ and fix the compensation of consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and other employees and agents as may be necessary in its judgment;
- (k) receive and accept from any public agency loans or grants for, or in aid of, the construction of a project or any portion of a project, and to receive and accept loans, grants, aid or contributions from any source of either money, property, labor or other things of value to be held, used and applied only for the purposes for which such loans, grants, aid and contributions are made:
- (l) mortgage a project and the site of the project for the benefit of the holders of revenue bonds issued to finance that project; provided, however, that the authority shall not mortgage any project undertaken on behalf of a public institution for higher education or the site of that project, and shall not convey that project or site except under section 7;
- (m) make loans to a participating institution for the cost of a project under an agreement between the authority and 1 or more participating institutions; provided, however, that no such loan shall exceed the total cost of the project as determined by the participating institution and approved by the authority;
- (n) make loans to participating institutions to refund outstanding obligations, mortgages or advances issued, made or given by the institutions for the cost of a project;

(o) charge to and equitably apportion among participating institutions its reasonable administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter; provided, however, that the authority shall contract with another public authority for the performance by that authority of core administrative functions, as determined by the secretary of housing and economic development and approved by a vote of the board of directors which may include but shall not be limited to, human resources, financial management, information technology, legal, procurement and asset management, to minimize the administrative costs and expenses apportioned to participating institutions under this clause; provided further, that such contracting for services with another public authority shall actually reduce such costs and expenses; provided further, that such contracting for services with another public authority shall not create a conflict of interest, compromise a fiduciary duty of a board member or employee, violate interests of bondholders or breach a bond covenant or procurement law; provided further, that if the authority does not contract with another public authority as required in this clause, the authority may only charge its reasonable administrative costs and expenses to participating institutions; provided, further, that the authority shall publish and disseminate through its website each fiscal year a schedule of fees or a methodology for determining fees to be charged under this clause, which shall be charged for similarly-situated projects, regardless of the size of the participating institution;

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(p) acquire and enter into commitments to acquire a federally guaranteed security and pledge or otherwise use the federally guaranteed security in such manner as the authority shall approve to secure or otherwise provide a source of repayment on any of its bonds or to enter into an appropriate agreement with 1 or more participating institutions whereby the authority may make a loan to any such institution for the purpose of enabling such institution to fund or

refund, directly or indirectly, the cost of acquiring or entering into commitments to acquire a federally guaranteed security; provided, however, that the federally guaranteed security is evidence of a federally insured project loan or, if not such evidence, that the authority determines that the federally guaranteed security has been issued to pass through a federally insured project loan;

- (q) issue electric rate reduction bonds, as defined in section 1H of chapter 164, for the benefit of any electric company, as defined in section 1 of said chapter 164, that is determined to be eligible for said bond financing by the department of energy resources under said chapter 164; provided, however, that such electric rate reduction bonds shall constitute bonds as defined in section 2; provided, further, that such an electric company shall be deemed to be a participating institution as defined in section 2; and provided further, that the financing or refinancing of transition costs or the acquiring of transition property as provided for in section 1H of said chapter 164 shall be deemed to be a project as defined in section 2; and
  - (r) make loans, grants and undertake other financing transactions;
- (s) establish and collect such fees and charges as the authority without appropriation shall determine to be reasonable; and to receive and apply revenues from fees and charges to the purposes of the authority or allotment by the commonwealth or a political subdivision of the commonwealth; and
  - (t) do all things necessary or convenient to carry out the purpose of this chapter.

In carrying out the purposes of this chapter, the authority may undertake joint projects for 2 or more participating institutions for higher education or 2 or more participating hospitals, or for any combination of participating institutions for higher education and participating

hospitals, and, thereupon, all other provisions of this chapter shall apply to and for the benefit of the authority and the participants in such joint projects.

The authority shall not undertake a project on behalf of a public institution for higher education except upon written request made by the advisory committee on education policy established under section 2 of chapter 15A.

Section 5. All expenses incurred in carrying out this chapter shall be payable solely from funds provided under the authority of this chapter and no liability or obligation shall be incurred by the authority under this chapter beyond the extent to which moneys shall have been provided under this chapter.

Section 6. The authority may, directly or by and through a participating institution, as its agent, acquire by purchase solely from funds provided under the authority of this chapter, or by gift or devise, and take title to such lands, structures, property, real or personal, rights, rights-of-way, air rights, franchises, easements and other interests in lands, including lands lying under water and riparian rights, which are located within the commonwealth as the authority may deem necessary or convenient for the acquisition, construction or operation of a project, upon such terms and at such prices as may be considered by the authority to be reasonable and can be agreed upon between the authority and the owner in the name of the authority or in the name of 1 or more participating institutions as its agent.

Section 7. When the principal of and interest on revenue bonds of the authority issued to finance the cost of a particular project for 1 or more participating institutions, including revenue refunding bonds issued to refund and refinance the revenue bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the revenue bonds, and

all other conditions of the resolution or trust agreement authorizing and securing the revenue bonds have been satisfied and the lien of the resolution or trust agreement has been released in accordance with the resolution or trust agreement, the authority shall promptly do such things and execute such deeds and conveyances as are necessary and required to convey title to the project to the participating institutions, all to the extent that title to the project is not, at the time, vested in the participating institutions.

Section 8. The authority may issue negotiable notes for a corporate purpose and may renew notes by issuing new notes, whether the notes to be renewed have or have not matured. The authority may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose. The notes may be authorized, sold, executed and delivered in the same manner as bonds. A resolution authorizing notes of the authority or an issue of notes by the authority may contain provisions which the authority is authorized to include in a resolution authorizing revenue bonds of the authority or an issue of bonds by the authority, and the authority may include in a note any terms, convenants or conditions which it is authorized to include in any bonds. A resolution may delegate to the executive director, assistant executive director, or any member of the authority or any combination of them, the power to determine any of the details of the notes and to award the notes to a purchaser. All the notes shall be payable solely from the revenues of the authority, subject only to any contractual rights of the holders of any of its notes or other obligations then outstanding.

## Section 9.

(a) The authority may issue revenue bonds for any corporate purpose and all the revenue bonds, notes, bond anticipation notes or other obligations of the authority issued under this

chapter shall be negotiable for all purposes notwithstanding their payment from a limited source and notwithstanding any general or special law to the contrary. In anticipation of the sale of revenue bonds the authority may issue negotiable bond anticipation notes and may renew the notes from time to time, but the maximum maturity of a bond anticipation note, including renewals of that note, shall not exceed 5 years from the date of issue of the original note. Bond anticipation notes shall be paid from revenues of the authority available for that purpose and not otherwise pledged, or from the proceeds of sale of the revenue bonds of the authority in anticipation of which they were issued. The notes shall be issued in the same manner as the revenue bonds. The notes and the resolution authorizing those notes may contain any provisions, conditions or limitations which a bond resolution of the authority may contain.

- (b) The revenue bonds and notes of every issue shall be payable solely out of revenues to the authority, subject only to any agreements with the holders of particular revenue bonds or notes pledging any particular revenues and subject to any agreements with any participating institution. Notwithstanding that revenue bonds and notes may be payable from a special fund, they shall be and be deemed to be, for all purposes, negotiable instruments, subject only to the provisions of the revenue bonds and notes for registration.
- (c) The revenue bonds may be issued as serial bonds or as term bonds, or the authority, in its discretion, may issue bonds of both types. The revenue bonds shall be authorized by resolution of the members of the authority and shall bear such date or dates, mature at such time or times, not exceeding 50 years from their respective dates, bear interest at such rate or rates, payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of

redemption, as such resolution or resolutions may provide. Such resolution or resolutions may delegate to the executive director, assistant executive director or any member of the authority or any combination of them, the power to determine any of the matters set forth in this section and the power to award the bonds to a purchaser or purchasers at public sale or to negotiate a sale to a purchaser or purchasers provided in the latter case that the bonds are to be reoffered to the public. The revenue bonds or notes may be sold at public or private sale for such price or prices as the authority shall determine. Pending preparation of the definitive bonds, the authority may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

- (d) A resolution authorizing a revenue bond or an issue of revenue bonds may contain provisions, which shall be a part of the contract with the holders of the revenue bonds to be authorized, as to:
  - (1) pledging all or any part of the revenues of a project, a revenue producing contract made by the authority with an individual, partnership, corporation or association or other body, public or private, or a federally guaranteed security and moneys received therefrom whether the security is acquired by the authority or a participating institution to secure the payment of the revenue bonds or of any particular issue of revenue bonds, subject to such agreements with bondholders as may then exist;
  - (2) the rentals, fees and other charges to be charged, and the amounts to be raised in each year by those rentals, fees and charges, and the use and disposition of the revenues;
  - (3) the establishment and setting aside of reserves or sinking funds, and the regulation and disposition of those reserves or sinking funds;

1952 (4) limitations on the right of the authority or its agent to restrict and regulate the use of the project; 1953 1954 (5) limitations on the purpose to which the proceeds of sale of any issue of revenue bonds then or thereafter to be issued may be applied, including as authorized purposes, 1955 all costs and expenses necessary or incidental to the issuance of bonds, to the acquisition 1956 1957 of or commitment to acquire a federally guaranteed security and to the issuance and 1958 obtaining of a federally insured mortgage note and pledging such proceeds to secure the payment of the revenue bonds or an issue of the revenue bonds; 1959 (6) limitations on the issuance of additional bonds, the terms upon which additional 1960 bonds may be issued and secured and the refunding of outstanding bonds; 1961 (7) the procedure, if any, by which the terms of a contract with bondholders may be 1962 1963 amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given; 1964 (8) limitations on the amount of moneys derived from the project to be expended for 1965 1966 operating, administrative or other expenses of the authority; (9) defining the acts or omissions to act which shall constitute a default in the duties 1967 1968 of the authority to holders of its obligations and providing the rights and remedies of such holders in the event of a default; 1969 (10) the duties, obligations and liabilities of any trustee or paying agent; and 1970 (11) the mortgaging of a project and the site of the project for the purpose of 1971 1972 securing the bondholders.

(e) Neither the members of the authority nor a person executing the revenue bonds or notes shall be liable personally on the revenue bonds or notes or be subject to any personal liability or accountability due to the issuance of the bonds or notes.

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(f) The authority shall have power out of any funds available for the authority to purchase its bonds or notes. The authority may hold, pledge, cancel or resell those bonds or notes, subject to and in accordance with agreements with bondholders.

Section 10. In the discretion of the authority a revenue bond issued under this chapter may be secured by a trust agreement by and between the authority and a corporate trustee, which may be a trust company or bank having the powers of a trust company under section 1A of chapter 172 or a sayings bank under section 2 of chapter 167F within the commonwealth. The trust agreement or the resolution allowing the authority to issue those revenue bonds may pledge or assign the revenues to be received or proceeds of a contract pledged and may convey or mortgage the project or a portion of the project. A trust agreement or resolution allowing the authority to issue the revenue bonds may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including particularly provisions that are specifically authorized by this chapter to be included in a resolution of the authority authorizing revenue bonds of the authority. A bank, trust company or savings bank incorporated under the laws of the commonwealth which may act as depository of the proceeds of bonds or of revenues or other moneys may furnish the indemnifying bonds or pledge the securities as may be required by the authority. A trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. A trust agreement or resolution may also contain other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the trust agreement or resolution may be treated as a part of the cost of the operation of a project.

Section 11. Revenue bonds issued under this chapter shall not be deemed to constitute a debt or liability of the commonwealth or of any political subdivision of the commonwealth or a pledge of the faith and credit of the commonwealth or of any political subdivision of the commonwealth, but shall be payable solely from the funds provided for payment of those funds from revenues. A revenue bond shall contain on its face a statement to the effect that neither the commonwealth nor the authority shall be obligated to pay the revenue bond or the interest on the revenue bond except from revenues of the project or the portion of the project for which they are issued and that neither the faith and credit nor the taxing power of the commonwealth or of a political subdivision of the commonwealth is pledged to the payment of the principal of or the interest on the bond. The issuance of revenue bonds under this chapter shall not directly or indirectly or contingently obligate the commonwealth or a political subdivision of the commonwealth to levy or to pledge any form of taxation or to make an appropriation for their payment.

Section 12. (a) The authority may fix, revise, charge and collect rates, rents, fees and charges for the use of and for the services furnished or to be furnished by each project and the authority may contract with any person, partnership, association or corporation, or other body, public or private, for those purposes.

(b) The rates, rents, fees and charges shall be fixed and adjusted in respect of the aggregate of rates, rents, fees and charges from a project so as to provide funds sufficient with other revenues, if any: (1) to pay the cost of maintaining, repairing and operating

the project and each and every portion thereof, to the extent that the payment of a cost has not otherwise been adequately provided for; (2) to pay the principal of and the interest on outstanding revenue bonds of the authority issued in respect of that project as the same shall become due and payable; and (3) to create and maintain reserves required or provided for in any resolution authorizing, or trust agreement securing, those revenue bonds of the authority.

- (c) The rates, rents, fees and charges shall not be subject to supervision or regulation by any department, commission, board, body, bureau or agency of this commonwealth other than the authority, except as provided in section 13.
- (d) A sufficient amount of the revenues derived in respect of a project, except the part of those revenues as may be necessary to pay the cost of maintenance, repair and operation and to provide reserves and for renewals, replacements, extensions, enlargements and improvements as may be provided for in the resolution authorizing the authority to issue revenue bonds of the authority or in the trust agreement securing the revenue bonds, shall be set aside at such regular intervals as may be provided in the resolution or trust agreement in a sinking or other similar fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on the revenue bonds as the payment of the principal of and interest on the revenue bonds shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as provided in the resolution or trust agreement. A pledge shall be valid and binding from the time when the pledge is made; the rates, rents, fees and charges and other revenues or other moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without any physical delivery of the lien

or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice of the lien.

- (e) Neither the resolution nor a trust agreement by which a pledge is created need be filed or recorded except in the records of the authority. The use and disposition of moneys to the credit of such sinking or other similar fund shall be subject to the resolution authorizing the authority to issue the bonds or of the trust agreement.
- (f) Except as may otherwise be provided in a resolution or a trust agreement, a sinking or other similar fund shall be a fund for all the revenue bonds issued to finance a project at 1 or more participating institutions, without distinction or priority of one over another; provided, however, that the authority in a resolution or trust agreement may provide that the sinking or other similar fund shall be the fund for a particular project at an institution and for the revenue bonds issued to finance a particular project and may, additionally, permit and provide for the authority to issue revenue bonds having a subordinate lien in respect of the security authorized in this section to other revenue bonds of the authority and, in such case, the authority may create separate or other similar funds in respect of the subordinate lien bonds.

Section 13. In the case of a project for a public institution for higher education, an establishment or revision of rules and regulations for the use of that institution and the fixing or revising of rates, rents, fees or other charges by the authority shall require the approval of the trustees. The trustees shall exercise their powers so that the aggregate of the rates, rents, fees and charges from the project with other revenues, if any, shall be sufficient: (1) to pay the cost

of maintaining, repairing and operating the project and each and every portion of the project, to the extent that the payment of the cost has not otherwise been adequately provided for; (2) to pay the principal of and the interest on outstanding revenue bonds of the authority issued in respect of such project as the principal of and the interest on those bonds shall become due and payable; and (3) to create and maintain reserves required or provided for in any resolution authorizing, or trust agreement securing, such revenue bonds of the authority. Upon a failure of the trustees to exercise those powers, the authority may establish or revise such rules and regulations and fix or revise such rates, rents, fees or other charges without the approval of the trustees; provided, however, that in that case the trustees may propose alternative rules and regulations or scale of rates, rents, fees or other charges which shall then be adopted by the authority if they will produce sufficient aggregate revenues to meet the requirements. The rates, rents, fees or other charges shall not, except as expressly provided in this section with respect to the trustee, be subject to supervision or regulation of a department, division, commission, board, bureau or agency of the commonwealth or a political subdivision of the commonwealth.

For the purpose of this section, the term "trustees" shall mean: (1) the advisory committee on education policy established in section 2 of chapter 15A, in the case of any state college, as listed in section 19 of chapter 73, or in the case of any community college, as defined in section 10 of chapter 15A; or (2) the trustees of the public institution of higher education, or said advisory committee on education policy if authorized by the trustees, in the case of a public university.

Section 14. Money received under the authority of this chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. An officer with whom, or a bank or trust company with

which, such money shall be deposited shall act as trustee of that money and shall hold and apply that money for the purposes provided in this chapter, subject to such regulations as this chapter and the resolution authorizing the bonds of an issue or the trust agreement securing those bonds may provide.

Section 15. Any holder of revenue bonds, notes, bond anticipation notes, other notes or other obligations of the authority issued under this chapter or any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the rights herein given may be restricted by any resolution authorizing the issuance of, or any such trust agreement securing, such bonds or other obligations, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the commonwealth or granted hereunder or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this chapter or by such resolution or trust agreement to be performed by the authority or any officer, employee or agent thereof, including the fixing, charging and collecting of the rates, rents, fees and charges herein authorized and required by the provisions of such resolution or trust agreement to be fixed, established and collected.

Section 16. The exercise of the powers granted by this chapter shall be for the benefit of the people of this commonwealth, for the increase of their commerce, welfare and prosperity, and for the improvement of their health and living conditions. The operation and maintenance of a project by the authority or its agent shall constitute the performance of an essential public function. Neither the authority nor its agent shall be required to pay a tax or assessment: (a) upon or in respect of a project or a property acquired or used by the authority or its agent under this chapter; or (b) upon the income from a project or a property acquired or used by the

authority or its agent. The income from a bond issued or transferred under this chapter, including any profit made on the sale of the bond, shall at all times be free from taxation of every kind by the commonwealth and by the municipalities and other political subdivisions in the commonwealth.

Section 17. (a) The authority may issue revenue bonds for the purpose of refunding outstanding revenue bonds of the authority, including the payment of a redemption premium on the bonds and any interest accrued or to accrue to the earliest or any subsequent date of redemption, purchase or maturity of the revenue bonds, and, if deemed advisable by the authority, for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions or enlargements of a project or any portion of a project.

- (b) The proceeds of revenue bonds issued to refund outstanding revenue bonds may, in the discretion of the authority, be applied to the purchase or retirement at maturity or redemption of such outstanding revenue bonds either on their earliest or any subsequent redemption date or upon the purchase or at the maturity of the bonds and may, pending such application, be placed in escrow to be applied to the purchase or retirement at maturity or redemption on a date as may be determined by the authority.
- (c) Escrowed proceeds, pending such use, may be invested and reinvested in direct obligations of the United States, or in certificates of deposit or time deposits secured by direct obligations of the United States, maturing at a time as shall be appropriate to assure the prompt payment, as to principal, interest and redemption premium, if any, of the outstanding revenue bonds to be so refunded. The interest,

income and profits, if any, earned or realized on such an investment may also be applied to the payment of the outstanding revenue bonds to be so refunded. After the terms of the escrow have been fully satisfied and carried out, a balance of such proceeds and interest, income and profits, if any, earned or realized on the investments may be returned to the authority for use by it in any lawful manner.

- (d) The portion of the proceeds of a revenue bond issued for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions or enlargements of a project may be invested and reinvested in direct obligations of the United States, or in certificates of deposit or time deposits secured by direct obligations of the United States, maturing not later than the time when such proceeds will be needed to pay all or any part of such cost. The interest, income and profits, if any, earned or realized on such an investment may be applied to the payment of all or any part of such cost or may be used by the authority in any lawful manner.
- (e) All such revenue bonds shall be subject to this chapter in the same manner and to the same extent as other revenue bonds issued under this chapter.

Section 18. Bonds issued by the authority under this chapter are hereby made securities in which all public officers and public bodies of the commonwealth and its political subdivisions, all insurance companies, trust companies, savings banks, co-operative banks, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited

with and received by any commonwealth or municipal officer or any agency or political subdivision of the commonwealth for any purpose for which the deposit of bonds or obligations of the commonwealth is now or may hereafter be authorized by law.

Section 19. The authority shall be subject to section 16G of chapter 6A and section 56 of chapter 23A.

Section 20. (a) The authority may take such action as it deems appropriate to enable its employees to come within the provisions and obtain the benefits of the federal social security act. If the employees of the authority shall come within the provisions of said social security act, their employment shall be included in the term "employment" as used in sections 1 to 7, inclusive, of chapter 151A.

- (b) Sections 26 to 29, inclusive, and sections 44A to 44M, inclusive, of chapter 149 and sections 39F to 39S, inclusive, of chapter 30 shall apply to the authority to the same extent and in the same manner as they are applicable to the commonwealth.
- (c) Notwithstanding chapter 106 or any other general or special law, the authority by the filing of financing statements, as provided in chapter 106, may perfect security interests in revenues and receipts of participating institutions, whether in the form of proceeds of accounts receivable or contract rights or otherwise, and in any rights to receive those revenues and receipts, and those perfected security interests shall take priority over any subsequently perfected security interests in those revenues, receipts or rights or in the accounts receivable, goods, contract rights, or other rights or personal property giving rise to the revenues, receipts or rights provided that the financing statements filed by the authority contain a reference to this section.

2175 (d) Real or personal property which forms or has formed any part of the cost of a
2176 project financed or refinanced in whole or in part by the authority shall be excluded from
2177 a calculation of real and personal property for any general or special law limiting the
2178 amount of real and personal property which may be owned or held by an institution.

Section 21. Sections 1 to 20, inclusive, of this chapter shall be deemed to provide a complete, additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws; provided, however, that the issuance of revenue bonds and revenue refunding bonds under this chapter need not comply with the requirements of any other law applicable to the issuance of bonds including, chapter 106. Except as otherwise expressly provided in this chapter, none of the powers granted to the authority by this chapter shall be subject to the supervision or regulation or require the approval or consent of any municipality or political subdivision or any department, division, commission, board, body, bureau, official or agency of the municipality or political subdivision or of the commonwealth.

Section 22. This chapter, being necessary for the welfare of the commonwealth and its inhabitants, shall be liberally construed to effect its purposes.

Section 23. To the extent that this chapter is inconsistent with any general statute or special act or parts thereof, this chapter shall be deemed controlling.

**SECTION 63.** Section 1 of chapter 29 of the General Laws, as so appearing, is hereby amended by striking out the definition of "State authority," and inserting in place thereof the following definition:-

"State authority" a body politic and corporate constituted as a public instrumentality of the commonwealth and established by an act of the General Court to serve an essential governmental function; provided, however that "state authority" shall not include: (1) a state agency; (2) a city or town; (3) a body controlled by a city or town; or (4) a separate body politic where the governing body is elected by the general public.

**SECTION 64.** Chapter 29 of the General Laws is hereby amended by inserting after section 30 the following section:-

Section 30A. Notwithstanding section 50 of chapter 3, or any other general or special law to the contrary, a state agency or state authority shall not use state funds to pay for an executive or legislative agent, as defined in section 39 of chapter 3, unless the executive or legislative agent is a full-time employee of the state agency or state authority.

**SECTION 65.** Section 1 of chapter 30A of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after paragraph (4) the following paragraph:-

(4A) "Proposed regulation", a proposal by an agency to adopt, amend or repeal an existing regulation.

**SECTION 66.** Said section 1 of said chapter 30A, as so appearing, is hereby further amended by inserting after paragraph (5) the following paragraph:-

(5A) "Small business", a business entity or agriculture operation, including its affiliates, that: (i) is independently owned and operated; (ii) has a principal place of business in the commonwealth; and (iii) if in a manufacturing industry, employs fewer than 500 full-time employees, if in a wholesale trade industry, employs fewer than 100 full-time employees or, if in any other industry, receives less than \$7,000,000 in annual receipts; provided, however, that

for purposes of this definition, the industry of a business shall be primarily classified according to the Table of Small Business Size Standards of the Small Business Administration, including all exceptions to such standards as set forth in said table.

**SECTION 67.** Section 2 of said chapter 30A, as so appearing, is hereby amended by inserting after the third paragraph the following 2 paragraphs:-

At least 21 days prior to the date of the public hearing, the agency shall file a small business impact statement considering the impact of the proposed regulation on small business with the state secretary. Notwithstanding the provisions of section 6, the state secretary shall include the statement of small business consideration on the electronic website of the state secretary; provided, however, that the full text of the small business impact statement may be inspected and copied in the office of the state secretary during business hours.

That small business impact statement shall include, but not be limited to, the following:

- (1) an estimate of the number of small businesses subject to the proposed regulation;
- (2) projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation;
  - (3) the appropriateness of performance standards versus design standards;
- (4) an identification of regulations of the promulgating agency, or of another agency or department of the commonwealth, which may duplicate or conflict with the proposed regulation; and

2238 (5) an analysis of whether the proposed regulation is likely to deter or encourage 2239 the formation of new businesses in the commonwealth; 2240 **SECTION 68.** Section 3 of said chapter 30A, as so appearing, is hereby amended by 2241 inserting after the third paragraph the following 2 paragraphs:— 2242 At least 21 days prior to the date of the proposed action, the agency shall file a small 2243 business impact statement considering the impact of the proposed action on small businesses 2244 with the state secretary. Notwithstanding the provisions of section 6, the state secretary shall 2245 include the small business impact statement on the electronic website of the state secretary; 2246 provided, however, that the full text of the small business impact statement may be inspected 2247 and copied in the office of the state secretary during business hours. That small business impact statement shall include, but not be limited to, the following: 2248 2249 (1) an estimate of the number of small businesses subject to the proposed regulation; 2250 2251 (2) projected reporting, recordkeeping and other administrative costs required for 2252 compliance with the proposed regulation; (3) the appropriateness of performance standards versus design standards; 2253 2254 (4) an identification of regulations of the promulgating agency, or of another 2255 agency or department of the commonwealth, which may duplicate or conflict with the 2256 proposed regulation; and 2257 (5) an analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the commonwealth; 2258

**SECTION 69.** The second paragraph of section 5 of said chapter 30A, as so appearing, is hereby amended by striking out the third sentence and inserting in place thereof the following sentence:- The requirements to file small business impact statements under this section and sections 2, 3 and 5A shall be enforceable by a civil action for mandamus relief, but the sufficiency of the statement filed shall not be grounds for invalidating or staying the effect of the regulation.

**SECTION 70.** Said section 5 of said chapter 30A, as so appearing, is hereby further amended by inserting after the second paragraph the following 2 paragraphs:-

Prior to the adoption of a proposed regulation, an agency shall file an amended small business impact statement, which considers, without limitation, whether any of the following methods of reducing the impact of the proposed regulation on small businesses would hinder achievement of the purpose of the proposed regulation:

- (1) establishing less stringent compliance or reporting requirements for small businesses;
- (2) establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (3) consolidating or simplifying compliance or reporting requirements for small businesses;
- (4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation;
- 2279 (5) an analysis of whether the proposed regulation is likely to deter or encourage 2280 the formation of new businesses in the commonwealth; and

2281	(6) minimizing adverse impact on small businesses by using alternative
2282	regulatory methods.
2283	SECTION 71. Said chapter 30A, as so appearing, is hereby amended by inserting after
2284	section 5 the following section:-
2285	Section 5A. Rules and regulations shall be reviewed at least once every 12 years after
2286	their publication as the final rules or regulations to ensure that those rules and regulations
2287	minimize economic impact on small businesses in a manner consistent with the stated objectives
2288	of applicable statutes.
2289	In reviewing a rule or regulation to minimize economic impact of the rule or regulation
2290	on small businesses, the agency shall file a small business impact statement which considers the
2291	following factors:
2292	(1) the continuing need for the rule or regulation;
2293	(2) the nature of complaints or comments received concerning the rule or
2294	regulation from the public;
2295	(3) the complexity of the rule or regulation;
2296	(4) the extent to which the rule or regulation overlaps, duplicates or conflicts
2297	with other federal, state and local governmental rules and regulations;
2298	(5) the length of time since the rule or regulation has been enacted, changed,
2299	amended or modified; and
2300	(6) the degree to which technology, economic conditions or other factors have
2301	changed in the subject areas affected by the rule or regulation.

**SECTION 71A.** Chapter 30B of the General Laws is hereby amended by adding the following section:-

SECTION 22. (a) Notwithstanding any general or special law to the contrary and to the extent permitted by federal law, a governmental body may, by a majority vote, establish a preference for the procurement of products or services by businesses, as defined in section 3A of chapter 23A, with their principal place of business in the commonwealth.

(b) If a governmental body establishes such a preference, the procurement officer responsible for procuring products and services on behalf of the governmental body shall effectuate such preference for the procurement in: (i) advertising for bids, contracts or otherwise and making reasonable efforts to facilitate the purchase of such products or services; and (ii) purchasing products or services by businesses, as defined in said section 3A of said chapter 23A, with their principal place of business in the commonwealth, unless the price of such goods or services exceed, by more than 10 per cent, the price of such goods or services produced by businesses with their principal place of business outside of the commonwealth.

**SECTION 72.** Section 23 of chapter 32 of the General Laws, as so appearing, is hereby amended by inserting after the word "section", in line 361, the following words:-

; provided, however, that consistent with sound investment policy and in accordance with the procedures and processes employed to oversee the allocation of traditional investment of funds, the director shall whenever reasonably possible ensure that funds are invested in banks or financial institutions which directly or through any subsidiary may make loans to small businesses, as defined in clause (A) of subdivision (7), and that when electing to make such

investments the board shall review the guidelines for investing in small businesses contained in subdivision (7) and monies shall be invested as much as reasonably possible in such banks, financial institutions or companies which provide capital to small businesses under those guidelines so long as such use is consistent with sound investment policy.

**SECTION 73.** Said section 23 of said chapter 32, as so appearing, is hereby further amended by adding the following subdivision:-

- (7) The guidelines for investing in small businesses with a principal place of business in the commonwealth shall be:
  - (a) For the purposes of this section small business shall be a business entity, including its affiliates, that (i) is independently owned and operated; (ii) has a principal place of business in the commonwealth; and (iii) if in a manufacturing industry, employs fewer than 500 full-time employees, if in a wholesale trade industry, employs fewer than 100 full-time employees or, if in any other industry, has less than \$7,000,000 in annual receipts; provided, however, that for purposes of this definition, the industry of a business shall be primarily classified according to the Table of Small Business Size Standards of the Small Business Administration, including all exceptions to such standards as set forth in said table.
  - (b) Investments shall be made by banks or financial institutions with demonstrated experience making capital available to small businesses with good management, which are fast growing and identify the potential to use increased capital to create jobs and which are experiencing difficulty in accessing capital.

(c) Capital shall be provided to small businesses in a variety of financial instruments, including but not limited to: working capital and expansion loans to businesses, both secured and non-secured; provide lines of credit; capital expenditure loans; term loans; project finance loans; grants; loan guarantees; and mezzanine and structured finance loans.

(d) Capital shall not be provided unless financial and managerial advisory services are also provided to the business that is served.

**SECTION 74.** Section 59 of chapter 40 of the General Laws, as so appearing, is hereby amended by striking out clause (iii) and inserting in place thereof the following clause:-

- (iii) authorizes tax increment exemptions from property taxes, under clause Fifty-first of section 5 of chapter 59, for a specified term not to exceed 20 years, for any parcel of real property which is located in the TIF zone and for which an agreement has been executed with the owner of the real property under clause (v); provided, however, that the TIF plan shall specify the level of the exemptions expressed as exemption percentages, not to exceed 100 per cent to be used in calculating the exemptions for the parcel, and for personal property situated on that parcel, as provided under said clause Fifty-first of said section 5 of said chapter 59; provided, further, that the exemption for each parcel of real property shall be calculated using an adjustment factor for each fiscal year of the specified term equal to the product of the inflation factors for each fiscal year since the parcel first became eligible for an exemption under this clause; provided, further that the inflation factor for each fiscal year shall be a ratio;
  - (a) the numerator of which shall be the total assessed value of all parcels of commercial and industrial real estate that are assessed at full and fair cash value for the current fiscal

year minus the new growth adjustment for the current fiscal year attributable to the
commercial and industrial real estate as determined by the commissioner of revenue
under subsection (f) of section 21C of chapter 59; and

(b) the denominator of which shall be the total assessed value for the preceding fiscal year of all the parcels included in the numerator; provided, however, that the ratio shall not be less than 1;.

**SECTION 74A.** Said section 59 of said chapter 40, as so appearing, is hereby by adding the following clause:-

(viii) requires a report to the city or town clerk and the economic assistance coordinating council detailing the status of the construction laid out in the plan; the current value of the property; the total number of jobs created as a result of the plan; the salaries of newly created positions; and the plans, if any, to create additional jobs due to the exemption; provided, however, that such a report shall be filed every 5 years for the term of the tax increment exemption.; provided, further, that a final report shall be filed in the final year of the exemption.

**SECTION 75.** Clause (iii) of subsection (a) of section 60 of said chapter 40, as so appearing, is hereby amended by striking out the introductory paragraph and inserting in place thereof the following introductory paragraph:-

(iii) authorize tax increment exemptions from property taxes, under clause Fifty-first of section 5 of chapter 59, for a specified term not to exceed 20 years, for any parcel of real property which is located in the UCH-TIF zone and for which an agreement has been executed

under clause (v); provided, however, that the UCH-TIF plan shall specify the level of exemptions expressed as exemption percentages, not to exceed 100 per cent to be used in calculating the exemptions for the parcel, and for personal property situated on that parcel, as provided under said clause Fifty-first of said section 5 of said chapter 59; provided, further, that the exemption for each parcel of real property shall be calculated using an adjustment factor for each fiscal year of the specified term equal to the product of the inflation factors for each fiscal year since the parcel first became eligible for such exemption under this clause; provided, further, that the inflation factor for each fiscal year shall be a ratio:—

**SECTION 76.** Clause (iii) of Section 60A of said chapter 40, as so appearing, is hereby amended by striking out the introductory paragraph and inserting in place thereof the following introductory paragraph: -

(iii) authorize tax increment exemptions from property taxes, under clause Fifty-first of section 5 of chapter 59, for a specified term not to exceed 20 years, for any parcel of real property which is located in the MWT-TIF zone and for which an agreement has been executed with the owner of the parcel under clause (iv); provided, however, that the MWT-TIF plan shall specify the level of exemptions expressed as exemption percentages, not to exceed 100 per cent, to be used in calculating the exemptions for the parcel, and for personal property situated on that parcel, as provided under said clause Fifty-first of said section 5 of said chapter 59; provided, further, that the exemption for each parcel of real property shall be calculated using an adjustment factor for each fiscal year of the specified term equal to the product of the inflation factors for each fiscal year since the parcel first became eligible for such exemption pursuant to this clause; provided, further, that the inflation factor for each fiscal year shall be a ratio:

2411	<b>SECTION 76A.</b> Section 3 of chapter 40A of the General Laws, as so appearing, is
2412	hereby amended by inserting after the word "more", in line 25, the following words:- or to
2413	parcels 1 acre or more if the sale of products produced from the agriculture, aquaculture,
2414	silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least
2415	\$1,000 per acre based on gross sales dollars.
2416	<b>SECTION 77.</b> Chapter 40E of the General Laws is hereby repealed.
2417	<b>SECTION 78.</b> The General Laws are hereby amended by striking out chapter 40F and
2418	inserting in place thereof the following chapter:-
2419	Chapter 40F. Massachusetts Growth Capital Corporation
2420	Section 1. For the purposes of this chapter the following words and terms shall, except
2421	where the context clearly indicates otherwise, have the following meanings:
2422	"Capital participation instruments", purchase of stock, both common and preferred,
2423	convertible securities, warrants, subscriptions, options to acquire, capital loans, and working
2424	capital or inventory loans, royalties, and other lawful derivations of the foregoing.
2425	"Community Development Corporation" or "CDC", a certified community development
2426	corporation, as defined in section 2 of chapter 40H.
2427	"Corporation" or "GCC", the Massachusetts Growth Capital Corporation created by
2428	section 2.

"Equity investment", any of the following types of investment activity: (a) a purchase of

stock; (b) a purchase of a partnership interest; (c) a purchase of a limited liability company

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membership interest; or (d) a loan made on such terms that it has sufficient characteristics of equity.

"Financial products", loans, equity investments and other similar financing activities including, but not limited to, the purchase of loans originated by a certified community development financial institution, the provision of loan guarantees, or the provision of surety bond guarantees.

"Project", (a) the act of making available financial products to small businesses and nonprofit corporations; (b) manufacturing, wholesale, retail, service, or other business activity; (c) economic development activity involving the financing of commercial, industrial or other real estate activity; or (d) other activity from which a community will derive economic benefit.

"Small business", a business entity, including its affiliates, that (a) is independently owned and operated; (b) has a principal place of business in the commonwealth; and (c) if in a manufacturing industry, employs fewer than 500 full-time employees, if in a wholesale trade industry, employs fewer than 100 full-time employees or, if in any other industry, has less than \$7,000,000 in annual receipts; provided, however, that for purposes of this definition, the industry of a business shall be primarily classified according to the Table of Small Business Size Standards of the Small Business Administration, including all exceptions to such standards as set forth in said table..

Section 2. (a) There is hereby created a body politic and corporate to be known as the Massachusetts Growth Capital Corporation. The GCC is hereby constituted a public

instrumentality and the exercise by the GCC of the powers conferred by this chapter shall be deemed to be the performance of an essential governmental function.

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The GCC shall be placed within the executive office of housing and economic development but shall not be subject to the supervision and control of an executive office, department, division, commission, board, bureau or agency except to the extent and in the manner provided by law.

(b) The corporation shall consist of 12 directors; 1 of whom shall be the secretary of housing and economic development, who shall serve as chair; 1 of whom shall be the secretary of administration and finance, or the secretary's designee; and 10 of whom shall be appointed by the governor. Of the 10 directors appointed by the governor; 3 shall be persons who together shall be experienced in small business financing, other financial instruments, turnarounds of troubled businesses, and the organization and operation of employee owned businesses; provided, however, that each such director shall be experienced and knowledgeable in at least 1 such area; 1 shall be a representative of an organization of small businesses or manufacturing companies in the commonwealth; I shall be a representative of a community bank in the commonwealth and nominated by the Massachusetts Bankers Association; 1 shall be experienced in community economic development and employed by a CDC or a representative of the Massachusetts Association of Community Development Corporations; 1 shall be a current or retired certified public accountant or chief financial officer; 1 shall be a practicing or retired attorney with a business financing experience; 1 shall be a small business owner; and 1 shall be a representative of organized labor. Each member appointed by the governor shall serve a term of 5 years, except that in making the governor's initial appointments the governor shall

appoint 2 members to serve for a term of 1 year, 2 members to serve for a term of 2 years, 2 members to serve for a term of 3 years, 2 members to serve for a term of 4 years, and 2 members to serve for a term of 5 years.

- (c) A person appointed to fill a vacancy in the office of a director shall be appointed in a like manner and shall serve for only the unexpired term. A director shall be eligible for reappointment. A director may only be removed from the director's appointment by the governor for good cause. The directors shall annually elect 1 director as vice-chair and designate a secretary-treasurer who need not be a director. The secretary-treasurer shall keep a record of the proceedings of the corporation and shall be the custodian of all books, documents, and papers filed with the corporation, the minute books of the corporation and of its official seal.
- (d) Six of the directors of the corporation shall constitute a quorum and 6 affirmative votes shall be necessary for the transaction of business or the exercise of a power or function of the corporation. Each director shall be entitled to reimbursement for the director's actual and necessary expenses incurred in the performance of the director's official duties.
- (e) The corporation, its directors, officers and employees shall be subject to sections 1 to 4, inclusive, of chapter 268A except that the corporation may purchase from, sell to, borrow from, loan to, contract with or otherwise deal with a person in which a director of the corporation is interested or involved; provided, however, that such interest or involvement is disclosed in advance to the directors and recorded in the minutes of the corporation; provided, further, that no director having such an interest or involvement may participate in a decision of

the directors relating to such person. Employment by the commonwealth or service in an agency of the commonwealth shall not be deemed to be such an interest or involvement.

- (f) The president of the corporation shall be appointed and the president's salary established by the directors. The president shall be the chief administrative and operational officer of the corporation and shall direct and supervise administrative affairs and the general management of the corporation. The president may employ such other employees as shall be designated by the directors, shall attend meetings of the directors, shall cause copies to be made of all minutes and other records and documents of the corporation and shall certify that such copies are true copies and all persons dealing with the corporation may rely upon such certification.
- (g) All officers and employees of the corporation having access to its cash and negotiable securities shall give bond to the corporation at its expense in such amounts and with such surety as the directors may prescribe. The persons required to give bond may be included in 1 or more blanket or scheduled bonds.
- (h) Directors shall not be liable to the commonwealth, to the agency or to any other person as a result of the director's activities, whether ministerial or discretionary, as such directors, except for willful dishonesty or intentional violations of the law. The corporation may purchase liability insurance for directors, officers, and employees and may indemnify said persons against claims of others.
- (i) Documentary materials, data or conversations made or received by a director or employee of the corporation and consisting of, or to the extent that such materials, data or

conversations consist of, trade secrets or commercial or financial information regarding the operation of a business conducted by an applicant for assistance which the corporation is empowered to render or regarding the competitive position of such applicant in a particular field of endeavor, shall not be public records of the corporation and shall not be subject to section 10 of chapter 66. A discussion or consideration of such trade secrets or commercial or financial information may be held by the directors in executive session closed to the public notwithstanding chapter 30A, but the purpose of such an executive session shall be set forth in the official minutes of the corporation and no business which is directly related to such purpose shall be transacted nor shall a vote be taken in such an executive session.

Section 3. The GCC shall have the power to:

- (a) adopt by-laws for the regulation of its affairs and the conduct of its business;
- (b) adopt an official seal;

- (c) sue and be sued in its own name;
- (d) make and execute contracts and all other instruments necessary or convenient for the exercise of its power and functions;
  - (e) acquire, hold and dispose of personal property for its corporate purposes;
  - (f) enter into agreements or other transactions with federal and state agencies;
- (g) acquire real property, or an interest in real property, by purchase or foreclosure, if such acquisition is necessary or appropriate to protect or secure an investment or loan in

which the agency has an interest; to sell, transfer and convey such property to a buyer and in the event such sale, transfer or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease such property to a tenant;

- (h) invest funds held in reserves or sinking funds, or funds not required for immediate disbursement, in such investments as may be lawful for fiduciaries in the commonwealth;
- (i) borrow money by the issuance of debt obligations whether tax exempt or taxable and secure such obligations by the pledge of its revenues or of the revenues, mortgages and notes of others; provided, however, that the corporation shall not issue debt obligations if the principal amount of those debt obligations, when added to the principal amount of existing debt obligations issued by the corporation, excluding debt obligations previously refunded or to be refunded by the corporation, would exceed 30 million dollars;
- (j) employ and fix the compensation of a president, who shall be the chief executive officer of the corporation and such other agents, employees, professional and business advisers as may be necessary in the judgment of the directors; provided, however, that the president, professional advisers and business advisers shall not be subject to chapter 31 or section 9A of chapter 30.
- (k) appear in its own behalf before boards, commissions, departments or other agencies of municipal, state or federal government;

2554	(l) procure insurance against any loss in connection with its property in such
2555	amounts, and from such insurers, as may be necessary or desirable;
2556	(m) consent, subject to any contract with noteholders or bondholders, whenever it
2557	deems it necessary or desirable in the fulfillment of the purposes of this chapter, to the
2558	modification, with respect to rate of interest, time of payment of an installment of
2559	principal or interest, or other terms, of a mortgage, mortgage loan, mortgage loan
2560	commitment, contract or other agreement to which the GCC is a party;
2561	(n) do any and all things necessary or convenient to carry out its purposes and
2562	exercise the powers expressly given and granted in this chapter;
•••	
2563	(o) receive and accept from federal and state agencies and public or private entities
2564	grants, loans or advances for or in aid of the purposes of this chapter and to receive and
2565	accept contributions from a source of either money, property, labor or other things of
2566	value, to be held, used and applied for the purposes of this chapter;
2567	(n) areata issue have and sall stock and other against participation instruments; to
2567	(p) create, issue, buy and sell stock and other capital participation instruments; to
2568	hold such stock and capital participation instruments and to underwrite the creation of a
2569	capital market for these securities;
2570	(q) provide advisory services, technical assistance and training programs to small
2571	businesses as may be necessary or desirable to carry out the purposes of this chapter;
2572	(r) exercise other powers, rights or responsibilities of a corporation organized under
2573	chapter 156B.

(s) create and issue shares which a person, firm or corporation may purchase;
provided, however, that each share issued shall be in the form of non-voting common
stock with each share having a par value of \$10; provided, further, that the total value of
the shares issued shall not exceed \$25,000,000:

- (t) make loans or grants to, or otherwise finance or invest in, a business to further the purposes of this chapter; provided, further, that such loans or grants may be made to certified community development corporations or other community based nonprofit entities for the purpose of such corporations or entities providing financing to businesses;
- (u) provide loan guarantees to public or private entities for the purpose of causing such entities to provide financing to a business;
- (v) establish and collect such fees, charges and interest rates as the corporation determines to be reasonable; and
- (w) require, by contract in a financing agreement, or otherwise, specific operational activities, financial actions or management changes, as conditions for the receipt of a loan, financing or investment by the corporation.

No debt obligation issued under paragraph (i), stock or capital participation instrument created under paragraph (p) or share issued under paragraph (s) shall be or become an indebtedness or obligation of the commonwealth, and it shall be plainly stated on the face of each bond, capital participation instrument, share or other evidence of indebtedness that it does

not constitute an indebtedness or obligation of the commonwealth but is payable solely from the revenues or income of the Massachusetts Growth Capital Corporation.

Section 4. The corporation shall contract with another public authority for the performance by that authority of core administrative functions, as determined by the secretary of housing and economic development which may include but shall not be limited to, human resources, financial management, information technology, legal, procurement and asset management, to minimize the administrative costs and expenses of the corporation.

## Section 5.

- (1) The corporation may participate in a project; provided that, the corporation shall find and incorporate in the official records of the corporation that the project will be of a public benefit such that the project is reasonably expected to:
- (a) support or promote economic development, revitalization or stability;
- (b) promote employment opportunities for residents of the commonwealth;
- (c) promote the creation or retention of jobs; or,
- (d) support the creation or expansion of a business sector whose success would enhance the economic development of the commonwealth, enhance the quality of life of residents of the commonwealth or enhance the employment opportunities for residents of the commonwealth.
- (2) The corporation shall not participate in a project unless it determines, in writing, that its participation is necessary because funding for the project is not available in the

traditional capital markets or that credit has been offered on terms that would preclude the success of the project.

- (3) The corporation shall endeavor to participate in projects each year that provide financial products, which in the aggregate total not less than 30 percent of the total capital committed by the corporation over a 3 year period, to projects which enhance the economic development of a target area, as defined in section 2 of chapter 40H, or enhance the quality of life and promote employment opportunities for low and moderate income residents of the commonwealth. If a certified CDC requests that the corporation participate in a project, the corporation shall make a determination of the likelihood that the project: (i) will provide employment opportunities to low and moderate income residents of the commonwealth; (ii) is likely to enhance the quality of life of low and moderate income residents of the commonwealth; or (iii) supports the creation or expansion of the business sector in the region served by the CDC. If the corporation enters into an agreement to participate in such a project, the terms of the financial products made available shall favorably reflect the economic and social benefits which inures to the commonwealth from the project.
- (4) Each contract shall include a requirement for adequate reporting of financial and other data to the corporation. The contract shall require that a business receiving financial products shall participate in financial and managerial consulting services and the contract shall include a requirement for an annual or other periodic audit of the project books.

Section 6. The corporation shall endeavor to participate in projects each year that provide financial products, which in the aggregate total not less than 20 percent of the total capital committed by the corporation in that year, to minority-owned or women-owned contractors notwithstanding the conditions described in section 5, except that the corporation

shall have determined, in writing; (a) that the project plans conform to applicable environmental, zoning, building, planning and sanitation laws; (b) that there is a reasonable expectation that the project will be successful; and (c) that the participation of the corporation is necessary for the successful completion of the proposed project because funding for the project is unavailable in the traditional capital markets, or that credit has been offered on terms that would preclude the success of the project.

Section 7. (a) The GCC may establish or invest in the capital stock of 1 or more corporations organized for the purposes of increasing capital available to small businesses or to engage local residents and businesses to work together to undertake programs, projects and activities which develop and improve urban, rural and suburban communities by creating and expanding economic opportunities for low and moderate income people. Without limitation, such a corporation may:

- (1) serve as a financial intermediary between entities undertaking projects and small businesses and public or private sources of capital including, without limitation, direct lenders, guarantors or grant makers. Any corporation so organized may accomplish its purposes by means of (i) investing in the equity capital of, (ii) making direct loans to, or (iii) issuing loan guarantees to entities undertaking projects or to small businesses; and
- (2) provide financial and managerial consulting services to entities undertaking projects, small businesses and minority-owned or women-owned contractors.

(b) The GCC may have a controlling or a minority interest in such a corporation, as the directors of the GCC shall determine in the board's discretion; provided, however, that at least 1 director of the GCC shall sit on the board of directors of the corporation.

- (c) A corporation established under this section or in which the GCC has invested under this section shall, prior to making an investment in the capital stock of, or loans or loan guarantees to entities undertaking projects or to small businesses, make the following findings:
  - (1) That such action is consistent with the objectives of this section and may reasonably be expected to contribute to the redevelopment and economic well-being of the commonwealth, will create or retain jobs or will assist minority or women-owned businesses.
  - (2) That the funds provided by the GCC will be used solely in connection with the costs of the project or the operation of the small business.
  - (3) That the contract for participation in a project requires adequate reporting of financial data from the small business or project to such corporation. The contract shall require that a business receiving financial products shall participate in financial and managerial consulting services and the contract shall include a requirement for an annual or other periodic audit of the books of the project or the small business.
  - (4) That its participation is necessary to the successful completion of the proposed project or to the success of the small business because funding for the project or small business is unavailable in the traditional capital markets, or that credit has been offered on terms that would preclude the success of the project or the small business.

2677 (5) That should the GCC desire to sell or otherwise dispose of stock received under such a contract, the small business or entity undertaking a project, or the small business or entity's nominee, shall within 120 days have the right of first refusal upon the sale and the right to meet a subsequent bona fide offer by a third party.

- (d) The GCC shall not, nor shall the GCC in combination with such a corporation, own more than 49 percent of the voting stock in a small business.
- (e) Upon the request of the GCC, the commissioner of banks shall examine the books of a corporation established or invested in by the GCC under this section if such examination is a condition of the particular investment, lending, loan guaranty or grant program administered by such corporation.

Section 8. (a) The corporation shall establish a program to support the provision of financial and managerial consulting and technical assistance to eligible companies which receive financial assistance from the commonwealth or any of the commonwealth's public authorities. Services supported may include, but are not limited to, procurement of investment capital, management, administration, production, product marketing, assisting business in securing federal contracts and business expansion, renovation and diversification. The program shall include: (i) referrals to technical assistance provided without charge to eligible companies by public and private small business support organizations; (ii) financial support to engage private consultants; and (iii) a directory of organizations, experts and consultants available to be engaged to offer financial or managerial consulting services.

(b) The corporation shall coordinate the program with the United State Small Business Administration, the Massachusetts Small Business Development Center Network and other private for profit and nonprofit providers of consulting and technical assistance to small businesses. The corporation shall consult with the commonwealth's public authorities, private business associations and regional economic development organizations in administering the program.

(c) The corporation may provide matching grants to fund consulting and technical assistance to small businesses who receive financial assistance from the commonwealth or any of the commonwealth's public authorities. The grants shall be used by the recipient businesses to pay for mandated small business consulting and technical assistance services. Prior to awarding a grant, the corporation shall have determined that the financial or managerial consulting services mandated as a condition of financial support of the small business are not available without charge from an entity participating in the program and that procuring such services creates a hardship and impedes the likelihood of success of a project. Grants awarded shall require a 100 percent match by the recipient.

Section 9.(a) The GCC may establish an economic stabilization program for the following purposes:

(1) To provide flexible high risk financing necessary to implement a change of ownership, a corporate restructuring or a turnaround plan for an economically viable, but troubled business which faces the likelihood of a large employment loss, plant closure or failure without such a change of ownership, corporate restructuring or turnaround plan. The program shall provide assistance to firms in specific mature industries for the purpose of technological investment or upgrading of management operations in order for the business to maintain future economic stability. The financial participation of the

GCC shall aim to supplement private financial institutions and public economic development agencies when such institutions are unable to provide all the financing or bear all of the risk necessary to transfer ownership, restructure or turnaround a business in a situation where the business might otherwise fail or greatly reduce its employment.

- (2) To provide flexible high risk financing in connection with the start-up of employee-owned businesses or the implementation of employee-ownership projects. The financial participation of the GCC shall aim to supplement private financial institutions and public economic development agencies when such institutions are unable to provide all the financing or bear all of the risk necessary to start-up an employee-owned business or implement an employee-ownership project.
- (b) The GCC shall endeavor to direct at least 10 percent of the financing provided by the economic stabilization program to businesses that are employee-owned businesses in order to fulfill the purposes of this section.
- (c) The GCC may participate in projects under this section, provided that, the corporation shall find and incorporate in the official records of the corporation that the project will be of a public benefit and:
- (1) when providing assistance in connection with the purchase of a troubled business, the directors shall determine and incorporate in the minutes of a meeting of the directors that:
  - (i) the business is likely to experience a large loss of employment, plant closure, or failure without the loan financing or investment by corporation;

2741 (ii) the business within a specific mature industry requires assistance for the
2742 purpose of technological investment or upgrading of management operations in order for
2743 the business to maintain future economic stability;

- (iii) the business or person seeking to purchase the business has taken or will take such actions as the directors deem necessary to ensure the business has a reasonable chance to continue as a successful business, including, but not limited to, changes in its operations, financing, or management and that said actions are included as a condition for financing by the corporation in the financing agreement; and
- (iv) the business or person seeking to purchase the business has made diligent efforts to obtain the financing necessary to continue its operations or transfer ownership of the business from private financial institutions and public economic development agencies and such financing is unavailable or has been offered on terms that would prevent the successful continuation or change in ownership of the business; or
- (2) when providing assistance in connection with an employee-owned business or an employee-ownership project, the directors shall determine and incorporate in the minutes of a meeting of the directors that:
  - (i) the business or person seeking assistance has taken or will take such actions as the directors deem necessary to ensure that the employee-ownership project has a reasonable chance to succeed; and
  - (ii) except with respect to assistance for pre-feasibility and feasibility studies, that such business or person has made diligent efforts to obtain the financing necessary

to institute or implement the employee-ownership project from private financial institutions and public economic development agencies, and such financing is unavailable or has been offered on terms that would prevent the successful institution or implementation of the project.

Section 10. The GCC shall be subject to section 16G of chapter 6A and section 56 of chapter 23A.

**SECTION 78A.** Section 24 of chapter 40B of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in line 17, the words "director of economic development" and inserting in place thereof the following words: secretary of housing and economic development.

**SECTION 79.** Section 2 of chapter 40G of the General Laws, as so appearing, is hereby amended by striking out, in lines 19 and 20, the words "eleven directors: the director of economic development, the secretary of administration, one" and inserting in place thereof the following words:- 11 directors: the secretary of housing and economic development, who shall serve as chair, the secretary of administration and finance, 1.

**SECTION 80.** The fifth paragraph of said section 2 of said chapter 40G, as so appearing, is hereby amended by striking out the fourth sentence.

**SECTION 81.** Subsection (d) of section 3 of said chapter 40G, as so appearing, is hereby amended in by adding the following words:- provided, however, that the MTDC shall contract with another public authority for the performance by that authority of core administrative functions, as determined by the secretary of housing and economic development, which may include but shall not be limited to, human resources, financial management,

information technology, legal, procurement and asset management, to minimize the administrative costs and expenses of the MTDC.

**SECTION 82.** Chapter 40G of the General Laws is hereby amended by adding the following section:-

Section 11. The MTDC shall be subject to section 16G of chapter 6A and section 56 of chapter 23A.

**SECTION 83.** Section 2 of chapter 40H of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the definition of "CDC" and inserting in place thereof the following definition:-

"CDC" or "Community Development Corporation", a non-profit corporation organized under chapter 180, and exempt from taxation under section 501(c) of the Internal Revenue Code and which:

- (a) focuses a substantial majority of the corporation's efforts on serving 1 or more specific neighborhoods or municipalities, a region of the commonwealth, or a constituency that is economically disadvantaged;
- (b) has as the corporation's purpose to engage local residents and businesses to work together to undertake community development programs, projects and activities which develop and improve urban, rural and suburban communities in sustainable ways that create and expand economic opportunities for low and moderate income people;
- (c) demonstrates to the department of housing and community development that the corporation's constituency, including low and moderate income people, is meaningfully represented on the board of directors of the corporation; provided, however, that in making this

determination, the department shall consider the following criteria (1) the percentage, if any, of the board that is elected by the general membership; (2) the percentage of the board members that are residents of the service area; (3) the percentage of board members that are people of low or moderate income; (4) the racial and ethnic composition of the board in comparison to the racial and ethnic composition of the community being served; (5) other mechanisms, including committees, membership meetings, that the organization uses to ensure that their constituency has a meaningful role in the governance and direction of the organization; and (6) other criteria as determined by the department.

**SECTION 84.** The definition of "Eligible organization" in section 2 of chapter 40H, as so appearing, is hereby amended by striking out the second sentence.

**SECTION 85.** Section 2 of chapter 40H, as so appearing, is hereby amended by striking out the definition of "Target Area" and inserting in place thereof the following definition:-

"Target area", a contiguous geographic area in which the project is located and is:(1) an economic target area designated under section 3D of chapter 23A; (2) the service area of community development corporation; or (3) a zip code whose current unemployment rate exceeds the state unemployment rate by at least 25 per cent or whose mean household income is at or below 80 per cent of the state mean household income as of the most recent decennial census.

**SECTION 86.** Chapter 40H of the General Laws, is hereby amended by inserting, after section 2, the following section:-

Section 2A (a) The director of housing and community development shall establish and maintain a list of organizations that have been certified as CDCs consistent with this chapter and develop a process for certifying said organizations; provided, however, that the organizations must be recertified at least once every 4 years. The process shall include an analysis of the organization's governance and a determination of whether the organization's constituency, including low and moderate income persons, is meaningfully represented on the board of directors of the organization. In making such determination, the director shall consider the following criteria: (a) the percentage, if any, of the board that is elected by the general membership; (b) the percentage of the board members who are residents of the service area; (c) the percentage of board members that are persons of low or moderate income; (d) the racial and ethnic composition of the board in comparison to the racial and ethnic composition of the community that the organization serves; (e) other mechanisms, including committees, membership meetings and others that the organization uses to ensure that the organization's constituency has a meaningful role in the governance and direction of the organization; and (f) other criteria as determined by the director of housing and community development.

- (b) The director of housing and community development shall file an annual report on December 15 with the speaker of the house of representatives, the president of the senate, the chairs of the house and senate committees on ways and means, the chairs of the joint committee on housing, and the chairs of the joint committee on community development and small business providing:
  - (i) a list of certified CDCs in the commonwealth; and

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(ii) a summary of programs, initiatives or partnerships operated by the executive office of housing and economic development, its agencies and quasi-public agencies organized under the executive office, that are designed to build the capacity of CDCs, provide training or technical assistance to CDC employees or board members, provide funding to support CDCs and their programs, projects and initiatives and otherwise help CDCs to engage local residents and businesses to work together to undertake programs, projects and activities which develop and improve urban, rural and suburban communities by creating and expanding economic opportunities for low and moderate income persons together with recommendations for action to enhance the ability of CDCs to advance those activities.

**SECTION 87.** Section 3 of chapter 40H of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in line 13, the words "nine directors, four" and inserting in place thereof the following words:- 9 directors, 1 of whom shall be the secretary of the housing and economic development, who shall serve as chair, 3.

**SECTION 88.** Subsection (b) of said section 3 of said chapter 40H, as so appearing, is hereby amended by striking out the sixth sentence.

**SECTION 89.** Chapter 40H of the General Laws is hereby amended by adding the following section:-

Section 9. CEDAC shall be subject to section 16G of chapter 6A and section 56 of chapter 23A.

**SECTION 90.** The third paragraph of section 3 of chapter 40J of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following 2 sentences:- The secretary of housing and economic

development or the secretary's designee shall serve as chairperson. The board shall annually elect from among its members a vice-chairperson and may designate a treasurer and a secretary, who need not be members of the board.

**SECTION 91.** Subsection (a) of section 6A of said chapter 40J of the General Laws, as so appearing, is hereby amended by striking out, in line 16, the words "undersecretary of business development" and inserting in place thereof the following words:- secretary of housing and economic development.

**SECTION 92.** Subsection (c) of section 6B of said chapter 40J, as so appearing, is hereby amended by striking out, in line 32, the words "or his designee" and inserting in place thereof the following words:- , who shall serve as chair.

**SECTION 93.** Sais subsection (c) of said section 6B of said chapter 40J, as so appearing, is hereby further amended by striking out the second sentence.

**SECTION 94.** The first paragraph of subsection (b) of section 6D of said chapter 40J, as so appearing, is hereby amended by striking out the second and third sentences and inserting in place thereof the following 2 sentences:- The council shall advise the institute on the dissemination of health information technology across the commonwealth, including the deployment of electronic health records systems in all health care provider settings that are networked through a statewide health information exchange. The council shall consist of 9 members; 1 of whom shall be the secretary of health and human services, who shall serve as the chair; 1 of whom shall be the secretary of administration and finance, or the secretary's designee; 1 of whom shall be the executive director of the health care quality and cost council; 1 of whom shall be the director of the office of Medicaid; 1 of whom shall be the secretary of housing and economic development or the secretary's designee; 4 of whom shall be appointed

by the governor, of whom at least 1 shall be an expert in health information technology, 1 shall be an expert in law and health policy and 1 shall be an expert in health information privacy and security.

SECTION 95. Chapter 40J of the General Laws is hereby amended by adding the

**SECTION 95.** Chapter 40J of the General Laws is hereby amended by adding the following section:-

Section 13. The corporation shall be subject to section 16G of chapter 6A and section 56 of chapter 23A.

SECTION 96. Section 1 of chapter 40Q of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the definition of "Base date" and inserting in place thereof the following 2 definitions:
"Adjustment factor", for each fiscal year of the term of a given development program, the product of the inflation factors for each fiscal year subsequent to the first fiscal year immediately following the base date.

"Base date", the last assessment date of the real property tax immediately preceding the creation of the district.

SECTION 97. The definition of "Development program" of said section 1 of said chapter 40Q, as so appearing, is hereby amended, in lines 31 and 32, by striking out clause (8) and inserting in place thereof the following clause:
(8) the duration of the program which shall not exceed the longer of (i) 30 years from the date of designation of the district or (ii) 30 years from project stabilization, as defined in the development program.

SECTION 98. Said section 1 of said chapter 40Q, as so appearing, is hereby amended by striking out the definition of "Inflation factor" and inserting in place thereof the following definition:
"Inflation factor", a ratio: (1) the numerator of which shall be the total assessed value of all parcels of residential, commercial and industrial real estate that are assessed at full and fair cash value for the current fiscal year minus the new growth adjustment factor for the current fiscal year attributable to the residential, commercial and industrial real estate as determined by the commissioner of revenue under paragraph (f) of section 21C of chapter 59; and (2) the denominator of which shall be the total assessed value for the preceding fiscal year of all the parcels included in the numerator; provided, however, the ratio shall not be less than 1; provided, further, that if the proposed Invested Revenue District does not include residential property, the assessed value attributable to residential property shall not be included in either the numerator or the denominator in calculating the inflation factor.

**SECTION 99.** The definition of "Invested revenue district development program" of said section 1 of said chapter 40Q, as so appearing, is hereby amended by striking out, in line 59, the word "and".

**SECTION 100.** Said definition of "Invested revenue district development program" of said section 1 of said chapter 40Q, as so appearing, is hereby further amended by adding the following words:-; and (8) if applicable, a statement of the city or town electing that the original assessed value not be increased by the adjustment factor.

**SECTION 101.** Said section 1 of said chapter 40Q, as so appearing, is hereby further amended by striking out the definition of "Original assessed value" and inserting in place

thereof the following definition:-

"Original assessed value", the aggregate assessed value of the invested revenue district as of the base date; provided, however, that if the city or town has not included an election statement in its investment district development program, the original assessed value in any year shall be equal to the original assessed value as of the base date multiplied by the adjustment factor for that fiscal year.

**SECTION 102.** Section 92 of chapter 41 of the General Laws, as so appearing, is hereby amended by striking out, in line 13, the words "two thousand five hundred dollars", and inserting in place thereof the following figure:- \$7,000.

**SECTION 103.** Said section 92 of said chapter 41 is hereby further amended by striking out, in lines 14 and 15, the words "two thousand five hundred dollars", and inserting in place thereof the following figure: \$7,000.

**SECTION 104.** Clause sixteenth of section 5 of chapter 59 of the General Laws, as so appearing, is hereby amended by striking out paragraph (3) and inserting in place thereof the following paragraph:-

(3) In the case of (i) a manufacturing corporation or a research and development corporation, as defined in section 42B of chapter 63, or (ii) a limited liability company that; (a) has its usual place of business in the commonwealth; (b) is engaged in manufacturing in the commonwealth and whose sole member is a manufacturing corporation as defined in section 42B of chapter 63 or is engaged in research and development in the commonwealth and whose sole member is a research and development corporation as defined in said section 42B; and (c) is a disregarded entity, as defined in paragraph 2 of section 30 of chapter 63, all property owned

by the corporation or the limited liability company other than real estate, poles and underground conduits, wires and pipes; provided, however, that no property, except property entitled to a pollution control abatement under clause forty-fourth or a cogeneration facility, shall be exempt from taxation if it is used in the manufacture or generation of electricity and it has not received a manufacturing classification effective on or before January 1, 1996. For the purposes of this section, a cogeneration facility shall be an electrical generating unit having power production capacity which, together with any other power generation facilities located at the same site, is not greater than 30 megawatts and which produces electric energy and steam or other form of useful energy utilized for industrial, commercial, heating or cooling purposes. For purposes of this paragraph, in determining whether the sole member of a limited liability company treated as a disregarded entity is a manufacturing corporation or a research and development corporation, the attributes and activities of the limited liability company shall be taken into account by the member along with the member's other attributes and activities. This clause as it applies to a research and development corporation, as defined in section 42B of said chapter 63, and as it applies to a limited liability company that is a disregarded entity and whose sole member is a manufacturing corporation or a research and development corporation shall take effect only upon its acceptance by the city or town in which the real estate, poles and underground conduits, wires and pipes are located.

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**SECTION 105.** Said section 5 of said chapter 59, as so appearing, is hereby amended by striking out clause Fifty-first and inserting in place thereof the following clause: -

Fifty-first, the value of a parcel of real property which is included within an executed agreement under clause (v) of section 59, clause (v) of subsection (a) of section 60 or clause (iv)

of subsection (a) of section 60A of chapter 40, and the value of personal property situated on that parcel, but taxes on real and personal property eligible for exemption under this clause shall be assessed only on that portion of the value of the property that is not exempt under section 59, section 60 or section 60A of chapter 40, and this exemption shall be for a term not longer than the period specified for the exemption in the agreement. The amount of the exemption under this clause for a parcel of real property shall be the exemption percentage adopted under clause (iii) of section 59, subsection (a) of section 60 or of section 60A of said chapter 40 multiplied by the amount by which the parcel's value exceeds the product of its assessed value for the last fiscal year before it became eligible for exemption under this clause multiplied by the adjustment factor determined under said section 59, section 60 or section 60A of said chapter 40. The amount of the exemption under this clause for personal property shall be the exemption percentage adopted under clause (iii) of section 59, subsection (a) of section 60 or of section 60A of said chapter 40 multiplied by the fair cash valuation of the personal property. Taxes on property eligible for exemption under this clause shall be assessed only on that portion of the value of the property that is not exempt under this clause.

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**SECTION 106.** Subsection (c) of section 45 of chapter 75 of the General Laws, as so appearing, is hereby amended by striking out, in line 15, the words, "director of business and technology" and inserting in place thereof the following words:- secretary of housing and economic development.

**SECTION 107.** Said subsection (c) of said section 45 of said chapter 75, as so appearing, is hereby further amended by striking out, in line 19, the words, "department of business technology" and inserting in place thereof the following words:- Massachusetts office of business development.

SECTION 108. Subsection (d) of said section 45 of said chapter 75, as so appearing, is hereby amended by striking out, in lines 25 to 27, inclusive, the words "director of business and technology, or his designee, the director of science and technology within the department of business and technology and 7" and inserting in place thereof the following words:- secretary of housing and economic development, who shall serve as chair, the executive director of the Massachusetts development finance agency, the president of the Massachusetts life sciences center, the executive director of the Massachusetts clean energy center, the director of the John Adams Innovation Institute, the president of the Massachusetts Technology development corporation and 8.

**SECTION 109.** Chapter 75 of the General Laws is hereby amended by inserting after section 45 the following section:-

Section 45A. The center shall be subject to section 16G of chapter 6A and section 56 of chapter 23A.

**SECTION 109A.** Section 52C of chapter 149 of the General Laws, as so appearing, is hereby amended by striking out the fifth paragraph and inserting in place thereof the following paragraph: -

An employer shall notify an employee within 10 days of the employer placing in the employee's personnel record any information to the extent that the information is, has been used or may be used to negatively affect the employee's qualification for employment, promotion, transfer, additional compensation or disciplinary action. An employer receiving a written request from an employee shall provide the employee with an opportunity to review such employee's personnel record within 5 business days of such request. The review shall take place at the place of employment and during normal business hours. An employee shall be given a copy of the employee's personnel record within 5 business days of submission of a

written request for such copy to the employer. An employer shall not be required to allow an employee to review the employee's personnel record on more than 2 separate occasions in a calendar year; provided, however, that the notification and review caused by the placing of negative information in the personnel record shall not be deemed to be 1 of the 2 annually permitted reviews.

**SECTION 110.** Section 1H of chapter 164 of the General Laws, as appearing in the 2008 official edition, is hereby amended by striking out the definition of the word "department" and inserting in place thereof the following definition:- "Department", the department of public utilities.

**SECTION 111.** The second paragraph of section 14 of chapter 167 of the General Laws, as so appearing, is hereby amended, in line 22, by striking out the words "8, 29 and 30" and inserting in place thereof the following words:- 8, 29, 30 and 30A.

**SECTION 112.** Section 2 of chapter 167F of the General Laws, as so appearing, is hereby amended by inserting after paragraph 30 the following paragraph: --

30A. To participate in the activities of the Massachusetts Growth Capital Corporation created under chapter 40F by making capital available to the corporation by making an investment or deposit in or grant to said corporation, an affiliate or subsidiary of said corporation or any fund managed by said corporation.

**SECTION 113.** Paragraph 13 of said section 2 of said chapter 167F, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- To act as trustee for the holders of a bond issued by the Massachusetts Industrial Finance Agency, under chapter 23A or by any industrial development authority of a city or

town under chapter 40D or by the Massachusetts Health and Educational Facilities Authority, under chapter 23K.

**SECTION 113A.** The first paragraph of section 168 of chapter 175 of the General Laws, as so appearing, is hereby amended by inserting after the sixth sentence the following sentence:-

Any insurance policy procured under this section shall contain the following disclosure notice to the policyholder: This policy is insured by a company which is not admitted to transact insurance in the commonwealth, is not supervised by the commissioner of insurance and, in the event of an insolvency of such company, a loss shall not be paid by the Massachusetts Insurers Insolvency Fund under chapter 175D. The commissioner may by regulation amend the foregoing disclosure notice.

**SECTION 113B.** Said section 168 of said chapter 175, as so appearing, is hereby further amended by striking out, in line 61, the word 'or'.

**SECTION 113C.** Said section 168 of said chapter 175, as so appearing, is hereby further amended by inserting after the figure '20A' the following words:-; or (c) such company is an eligible alien unauthorized insurer as defined in section 168A.

**SECTION 113D.** Said chapter 175 is hereby further amended by inserting after section 168 the following section:-

Section 168A. (a) As used in this section "eligible alien unauthorized insurer" shall mean a company formed under the laws of any government or state other than the United States

or 1 of its states or its territories that has filed an application with the commissioner pursuant to subsection (c)(4) of this section, which application has been approved by the commissioner.

- (b) Notwithstanding any general or specific law to the contrary, a special broker licensed by the commissioner pursuant to section 168 of this chapter may procure insurance from any company formed under the laws of any government or state other than the United States or one of its states or its territories that is not authorized to transact business in the commonwealth if:
  - (1) such company has been determined by the commissioner to be an eligible alien unauthorized insurer pursuant to clause (4) of subsection (c);
  - (2) the special broker has executed and filed an affidavit with the commissioner within 20 days after procuring such insurance stating that the full amount or type of insurance cannot be obtained from among companies admitted to transact insurance in the commonwealth after a diligent effort has been made to do so and that the amount of insurance procured in such company is only the excess over the amount so procurable from admitted companies;
  - (3) the procured policy contains the disclosure notice required by section 168; and
  - (4) all other requirements of this section and section 168 that are not inconsistent with this subsection have been met.

Insurance procured under this section shall be valid and enforceable as to all parties.

Nothing in this section shall be deemed to amend or modify any of the provisions of, or any of the exemptions specified in, section 168 that are inconsistent with this section.

- 3091 (c) No company shall be determined to be an eligible alien unauthorized insurer unless it:
  - (1) has provided satisfactory evidence to the commissioner of its good reputation and financial integrity;
  - (2) has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction in an amount not less than \$20,000,000;
  - (3) has in force a United States trust fund of not less than the greater of:
    - (i) \$5,400,000; or

(ii) a percentage of its United States surplus lines gross liabilities arising from business written on or after January 1, 1998, excluding aviation, wet marine, transportation insurance and direct procurement placements, such percentage to equal to the percentage and subject to any cap employed by the International Insurers Department of the National Association of Insurance Commissioners, as of December 31 next preceding the date of determination, where: (A) the liabilities are maintained in an irrevocable trust account in the United States in a qualified financial institution, on behalf of United States policyholders consisting of cash, securities, letters of credit or other investments of substantially the same character and quality as those which are eligible investments pursuant to this chapter for the capital and statutory

reserves of admitted insurers to write like kinds of insurance in the commonwealth; provided, however, that the trust fund, which shall be included in any calculation of capital and surplus or its equivalent, shall satisfy the requirements of the Standard Form Trust Agreement required for listing with the International Insurers Department of the National Association of Insurance Commissioners; (B) the company may request approval from the commissioner to use the trust fund to pay valid surplus lines claims; provided, however, that the balance of the trust fund shall never be less than the minimum amount required by this subsection; and (C) in calculating the trust fund amount required by this subsection, credit shall be given for surplus lines deposits separately required and maintained for a particular state or territory of the United States, not to exceed the amount of the company's loss and loss adjustment reserves in that particular state or territory; and

- (4) has submitted to the commissioner an application evidencing the company's compliance with the requirements of this section that has been approved by the commissioner.
- (d) The application required by clause (4) subsection (c) shall be on forms issued or approved by the commissioner and shall include the following information regarding the alien unauthorized insurer applicant:
  - (1) evidence that the unauthorized alien insurer has been listed by the International Insurers Department of the National Association of Insurance Commissioners;

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(2) a certified audited financial statement of the eligible alien unauthorized insurer reflecting information as of a date not more than 12 months prior to the submission of the application evidencing compliance with the capital and surplus requirements of clause (2) of subsection (c) and an actuarial opinion as to the adequacy of and methodology used to determine the insurer's loss reserves;

(3) a copy, certified by the trustee, of the United States trust agreement required by clause (3) of subsection (c) prepared in accordance with the National Association of Insurance Commissioner's Standard Form Trust Agreement for Alien Excess or Surplus Lines Insurers;

- (4) a copy, certified by the trustee, of the most recent quarterly statement of account or list of assets in the trust account required by clause (3) of subsection (c) evidencing that the alien unauthorized insurer has in force, as of the end of the most recent quarter, assets in the amounts required by said (clause (3) of said subsection (c);
- (5) a certified copy of the eligible alien unauthorized insurer's current license or certificate of authority issued by its domiciliary jurisdiction indicating that the company is authorized to insure the types of risks in its domiciliary jurisdiction that it proposes to insure in the commonwealth:
- (6) a Certificate of Good Standing or substantially similar documentation issued by the eligible alien unauthorized insurer's domiciliary jurisdiction;
- (7) biographical affidavits, on forms promulgated by the National Association of Insurance Commissioners or approved by the commissioner for all executive officers,

3151	directors and senior management personnel of the eligible alien unauthorized insurer,
3152	prepared not more that 12 months prior to the submission date of the application
3153	required by clause (4) of subsection (c); and
3154	(8) such additional information as the commissioner may require in order to
3155	determine that the eligible alien unauthorized insurer complies with the requirements of
3156	this section.
3157	(e) The commissioner may refuse to approve an application pursuant to this section if
3158	the commissioner is of the opinion that such refusal will be in the public interest. In reviewing
3159	an application, the commissioner may consider such factors as:
3160	(1) the length of time the insurer has been authorized in its domiciliary jurisdiction
3161	and elsewhere;
3162	(2) the unavailability of the particular coverages from authorized insurers or
3163	unauthorized insurers meeting the requirements of this section and section 168;
3164	(3) the size of the company as measured by its assets, capital and surplus, reserves,
3165	premium writings, insurance in force or other appropriate criteria;
3166	(4) the kinds of business the company writes, its net exposure and the extent to
3167	which the company's business is diversified among several lines of insurance and
3168	geographic locations; and

3169	(5) the past and projected trend in the size of the company's capital and surplus
3170	considering such factors as premium growth, operating history, loss and expense ratios
3171	or other appropriate criteria
3172	(f) The commissioner may revoke a company's status as an eligible alien unauthorized
3173	insurer in accordance with the terms and conditions of section 5 the commissioner has
3174	determined that the insurer:
3175	(1) is in unsound financial condition or has acted in an untrustworthy manner;
3176	(2) no longer meets the standards set forth in subsection (c);
3177	(3) has willfully violated the laws of the commonwealth; or
3178	(4) does not conduct a proper claims practice.
3179	SECTION 114. Section 21 of chapter 218 of the General Laws, as so appearing, is
3180	hereby amended by striking out, lines 6 and 35, the following words, "two thousand dollars"
3181	and inserting in place thereof the following figure:- \$7,000.
3182	<b>SECTION 115.</b> Section 22 of said chapter 218, as so appearing, is hereby amended by
3183	adding the following paragraph:-
3184	The entry fee shall be \$75 for a party that has filed 5 statements of claim in a small-
3185	claims session of the court during the calendar year, \$150 for a party that has previously filed 10
3186	statements of claim in a small-claims session of the court during the calendar year and \$240 for
3187	a party that has previously filed 100 statements of claim in a small-claims session of the court
3188	during the calendar year.
3189	SECTION 116. Chapter 465 of the acts of 1956 is hereby amended by inserting after

section 21 the following section:-

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Section 21A. The authority shall be subject to section 16G of chapter 6A and section 56 of chapter 23A of the General Laws.

**SECTION 117.** Chapter 614 of the acts of 1968 is hereby repealed.

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**SECTION 118.** Section 33 of chapter 190 of the acts of 1982 is hereby amended by striking out the second paragraph, as appearing in chapter 23 of the acts of 1998, and inserting in place thereof the following paragraph:-

The authority shall consist of 13 members, 9 of whom shall be appointed by the governor, 1 of whom shall be the secretary of housing and economic development or the secretary's designee, who shall serve as chair, 1 of whom shall be appointed from a list of 3 nominees recommended by the Massachusetts Visitors Industry Council, 1 of whom shall be appointed from a list of 3 nominees recommended by the Massachusetts Lodging Association, 1 of whom shall be a resident of the city of Cambridge and 1 of whom shall be a resident of Hampden county. Two persons shall be appointed by the mayor of the city of Boston, 1 of whom shall be a resident of South Boston. The remaining 2 persons shall be the secretary of administration and finance or the secretary's designee and the collector-treasurer of the city of Boston or the collector-treasurer's designee, both of whom shall serve ex officio and shall have the right to exercise or vote on matters before the authority. Three of the members of the authority first appointed by the governor shall continue in office for a term expiring December 31, 2000 and 3 members of the authority first appointed by the governor shall continue in office for a term expiring December 31, 2001 and 3 members of the authority first appointed by the governor shall continue in office for a term expiring December 31, 2003. The term of each such member shall be designated by the governor and shall continue until the member's successor is

duly appointed and qualified. The members appointed by the mayor shall continue in office for a term expiring December 31, 1999, and shall continue until their successors are duly appointed and qualified. The successor of each such member shall be appointed for a term of 6 years and until his successor is duly appointed and qualified, except that a person appointed to fill a vacancy shall serve only for the unexpired term and until the appointee's successor is duly appointed and qualified. Each member of the authority shall be eligible for reappointment. Each member of the authority shall serve at the pleasure of the governor, if appointed by the governor, and each member of the authority may be removed by the governor, if appointed by the governor, or by the mayor, if appointed by the mayor. Each member of the authority before entering upon such member's duties shall take an oath before the governor to administer the duties of the member's office faithfully and impartially, and a record of such oaths shall be filed in the office of the secretary of the commonwealth. Members of the authority shall serve without compensation, but service as a member of the authority shall be credited to such member's years in service for pension and retirement purposes.

**SECTION 119.** Chapter 190 of the acts of 1982 is hereby amended by inserting after section 40 the following section:-

Section 40A. The Authority shall be subject to section 16G of chapter 6A and section 56 of chapter 23A of the General Laws.

**SECTION 120.** Sections 6, 7A, 7B and 8 of chapter 324 of the acts of 1987 are hereby repealed.

**SECTION 121.** Section 64 of chapter 365 of the acts of 1996, as amended by chapter 352 of the acts of 2004, is hereby amended by adding the following sentence:-

The corporation shall be subject to section 16G of chapter 6A and section 56 of chapter 23A of the General Laws.

**SECTION 122.** Notwithstanding any general or special law to the contrary, certain regulatory approvals are hereby extended as provided in this section.

(a) For purposes of this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Approval" except as otherwise provided in subsection (b), any permit, certificate, order, excluding enforcement orders, license, certification, determination, exemption, variance, waiver, building permit, or other approval or determination of rights from any municipal, regional or state governmental entity, including any agency, department, commission, or other instrumentality of the municipal, regional or state governmental entity, concerning the use or development of real property, including certificates, licenses, certifications, determinations, exemptions, variances, waivers, building permits, or other approvals or determination of rights issued or made under chapter 21, chapter 21A excepting section 16, chapter 21D, sections 61 to 62H, inclusive, of chapter 30, chapters 30A, 40, 40A to 40C, inclusive, 40R, 41, 43D, section 21 of chapter 81, chapter 91, chapter 131, chapter 131A, chapter 143, sections 4 and 5 of chapter 249, or chapter 258, of the General Laws or chapter 665 of the acts of 1956, or any local by-law or ordinance.

"Development", division of a parcel of land into 2 or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of a building or other structure or facility, or any grading, soil removal or relocation, excavation or landfill or any use or change in the use of any building or other structure or land or extension of the use of land.

"Tolling period", the period beginning January 1, 2008 and continuing through January 3258 1, 2011.

- (b) (1) Notwithstanding any general or special law to the contrary, an approval in effect or existence during the tolling period shall be extended for a period of 3 years, in addition to the lawful term of the approval.
  - (2) Nothing in this section shall be deemed to extend or purport to extend:
  - (i) a permit or approval issued by the government of the United States or an agency or instrumentality of the government of the United States or to a permit or approval, of which the duration of effect or the date or terms of its expiration are specified or determined by or under law or regulation of the federal government or any of its agencies or instrumentalities;
  - (ii) an enforcement order issued by the department of environmental protection; or
  - (iii) a permit, license, privilege or approval issued by the division of fisheries and wildlife under chapter 131 for hunting, fishing or aquaculture.
- (3) Nothing in this section shall affect the ability of a municipal, regional or state governmental entity, including an agency, department, commission or other instrumentality of a municipal, regional or state governmental entity to revoke or modify a specific permit or approval or extension of a specific permit or approval under this section, when that specific permit or approval or the law or regulation under which the permit or approval was issued contains language authorizing the modification or revocation of the permit or approval.
- (4) In the event that an approval tolled under this section is based upon the connection to a sanitary sewer system, the approval's extension shall be contingent upon the availability of

sufficient capacity, on the part of the treatment facility, to accommodate the development whose approval has been extended. If sufficient capacity is not available, those permit holders whose approvals have been extended shall have priority with regard to the further allocation of gallonage over those approval holders who have not received approval of a hookup prior to the effective date of this section. Priority regarding the distribution of further gallonage to a permit holder who has received the extension of an approval under this section shall be allocated in order of the granting of the original approval of the connection.

(5) Nothing in this section shall be construed or implemented in such a way as to modify a requirement of law that is necessary to retain federal delegation to, or assumption by, the commonwealth of the authority to implement a federal law or program.

SECTION 123. Notwithstanding any general or special law to the contrary, within 4 years of the effective date of this act, each agency shall review the agency's rules and regulations currently existing to determine whether such rules and regulations should be continued without change or should be amended or rescinded to minimize economic impact of those rules and regulations on small businesses in a manner consistent with the stated objective of applicable statutes. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date the agency shall publish a statement certifying that determination. The agency may extend the completion date by 1 year at a time for a total of not more than 5 years.

**SECTION 124.** Notwithstanding any general or special law to the contrary, the executive office of housing and economic development shall conduct a study to examine the cost reliability and economic impact of electricity. The study shall include, but not be limited to:

(i) an analysis of the economic and reliability implications of implementing administrative, regulatory and legislative mandates as they pertain to electricity; and

(ii) the extent to which efforts to achieve recently-established goals relating to zero net energy growth, greenhouse gas reductions or scheduled increases in renewable power, demand resources and energy efficiency contribute to the rates paid by residential, commercial and industrial customers in the commonwealth.

The study shall be completed with stakeholder input, including representatives from various sectors of the commonwealth's economy. The study shall be completed and submitted to the joint committee on telecommunications, utilities and energy no later than December 31, 2010.

**SECTION 125.** Notwithstanding any general or special law to the contrary, all current members of the health and educational facilities authority established by section 4 of chapter 614 of the acts of 1968 shall continue to serve, as if the member had been appointed under chapter 23K, until the expiration of the term of that member.

SECTION 126. Notwithstanding any general or special law to the contrary, all current assets, liabilities, obligations and debt of the authority shall be deemed to have been created under chapter 23K of the General Laws, and no existing rights of the holders of the bonds, revenue bonds, notes, bond anticipation notes, other notes or other obligations issued by HEFA under chapter 614 of the acts of 1968 shall be impaired and HEFA shall maintain the covenants of the trust indentures pertaining to those bonds so long as those bonds shall remain outstanding.

**SECTION 127.** Notwithstanding any other general or special law to the contrary, the pension reserves investment management board established under section 23 of chapter 32 of the general laws shall review its investment portfolio and to the extent it is reasonably possible it shall invest not less than \$25,000,000 and not more than \$50,000,000 in banks or financial institutions which make capital available to small businesses under the guidelines of subdivision (7) of section 23 of chapter 32 of the general laws and shall make such investment a priority of the portfolio as long as such investment is consistent with sound investment policy.

SECTION 128. Notwithstanding any other general or special law to the contrary a stock purchase agreement between the commonwealth and Community Development Finance Corporation (CDFC) in existence on the effective date of this act which contains outstanding obligations on the part of the commonwealth and which has been pledged as security for the payment of debt obligations issued by the CDFC which are also outstanding on the effective date of this act shall continue to constitute a general obligation of the commonwealth for which the faith and credit of the commonwealth remains pledged for the benefit of CDFC and of the holders of said debt obligations of CDFC until the terms of said debt obligations are satisfied.

SECTION 129. (a) Notwithstanding any general or special law to the contrary, this section shall facilitate the orderly transfer of the employees, proceedings, rules and regulations, property and legal obligations of the following functions of state government from the transferor agency to the transferee agency, defined as follows: (1) the functions of the Massachusetts

Sports and Entertainment Commission, as the transferor agency, to the Massachusetts marketing partnership, as the transferee agency; (2) the functions of the Community Development Finance Corporation and the Economic Stabilization Trust, as transferor agencies, to the Massachusetts

Growth Capital Corporation, as the transferee agency; (3) the functions of the department of

business development, as the transferor agency, to the Massachusetts office of business development, as the transferee agency; (4) the functions of the office of travel and tourism in the department of business development, as the transferor agency, to the office of travel and tourism in the Massachusetts marketing partnership, as the transferee agency; (5) the functions of the office of international trade and investment in the department of business development, as the transferor agency, to the Massachusetts international trade office in the Massachusetts marketing partnership, as the transferee agency; and (6) the function of the office of small business and entrepreneurship, as the transferor agency, to the Massachusetts Office of Business Development, as the transferee agency.

(b) The employees of each transferor agency, including those who immediately before the effective date of this act hold permanent appointment in positions classified under chapter 31 of the General Laws or have tenure in their positions as provided by section 9A of chapter 30 of the General Laws or do not hold such tenure, or hold confidential positions, are hereby transferred to the respective transferee agency, without interruption of service, without impairment of seniority, retirement or other rights of the employee, and without reduction in compensation or salary grade, notwithstanding any change in title or duties resulting from such reorganization, and without loss of accrued rights to holidays, sick leave, vacation and benefits,. The reorganization shall not impair the civil service status of any such reassigned employee who immediately before the effective date of this act either holds a permanent appointment in a position classified under chapter 31 of the General Laws or has tenure in a position by reason of section 9A of chapter 30 of the General Laws.

Notwithstanding the provisions of any general or special law to the contrary, all such employees shall continue to retain their right to collectively bargain under chapter 150E of the

General Laws and shall be considered employees for the purposes of said chapter 150E.

Nothing in this section shall be construed to confer upon an employee a right not held immediately before the date of said transfer, or to prohibit a reduction of salary grade, transfer, reassignment, suspension, discharge, layoff or abolition of position not prohibited before such date.

- (c) All petitions, requests, investigations and other proceedings appropriately and duly brought before each transferor agency or duly begun by each transferor agency and pending before it before the effective date of this act, shall continue unabated and remain in force, but shall be assumed and completed by the transferee agency.
- (d) All orders, rules and regulations duly made and all approvals duly granted by each transferor agency, which are in force immediately before the effective date of this act, shall continue in force and shall thereafter be enforced, until superseded, revised, rescinded or canceled, in accordance with law, by the transferee agency.
- (e) All books, papers, records, documents, equipment, buildings, facilities, cash and other property, both personal and real, including all such property held in trust, which immediately before the effective date of this act are in the custody of each transferor agency shall be transferred to the transferee agency.
- (f) All duly existing contracts, leases and obligations of each transferor agency shall continue in effect but shall be assumed by the respective transferee agency. No existing right or remedy of any character shall be lost, impaired or affected by this act.

**SECTION 129A**. Notwithstanding any general or special law to the contrary, there shall be, within the executive office of housing and economic development, the Massachusetts business beacon award committee. The committee shall be chaired by the lieutenant governor,

or the lieutenant governor's designee, and shall consist of the secretary of the executive office of housing and economic development, or the secretary's designee; the senate and house chairs of the joint committee on economic development and emerging technologies; the president of the Associated Industries of Massachusetts, or the president's designee; the executive director of the Massachusetts business roundtable; the Massachusetts state director of the national federation of independent business; the president of the small business association of New England; and 2 representatives of chambers of commerce appointed by the governor for terms of 2 years, provided, however, that for the initial appointment, 1 chamber representative shall be appointed for 1 year, and the second chamber representative for 2 years. Vacancies may be filled in the same manner as the original appointment.

The committee shall create and manage the Massachusetts Business Beacon Award program to honor businesses in the commonwealth providing employment and supporting the economy of the commonwealth for 50 or more years. Any person may nominate a business that meets said criteria for consideration by the committee to receive the award. The committee shall establish separate levels of recognition for businesses that have existed in the commonwealth providing employment and supporting the economy of the commonwealth for at least 50 years, for at least 75 years and for at least 100 years.

The committee shall periodically select businesses to receive the Massachusetts

Business Beacon Award for the various levels of recognition as the committee considers

appropriate considering the significance of the contribution of each business to the

commonwealth. The committee shall honor the recipient of a Massachusetts Business Beacon

Award with a plaque that includes the business' level of recognition and other appropriate

information.

The committee shall notify the state senator and state representative in whose district the business' principal place of business in the commonwealth is located. The committee, the business and the notified state senator and state representative shall cooperate in determining the date and location of a presentation ceremony to present the award.

SECTION 129B. There shall be a commission to develop an index of creative education in the public schools. The commission shall consist of the commissioner of elementary and secondary education, the secretary of housing and economic development, the secretary of labor and workforce development, or their designees, the executive director of the Massachusetts cultural council, 3 members to be appointed by the senate who shall reside in different geographic regions, 3 members to be appointed by the house who shall reside in different geographic regions and 5 persons to be appointed by the governor who shall reside in different geographic regions, 1 of whom shall be a representative of the Massachusetts Advocates for the Arts, Sciences and Humanities, 1 of whom shall be a representative of the Associated Industries of Massachusetts and 1 of whom shall be a representative of the Massachusetts Business. Each of the members shall be an expert or have experience in the fields of education, public policy, artistic development, workforce development or cultural development

In the course of its deliberations, the commission shall develop recommendations on how to produce and implement an index of creative and innovative education in the public schools, what funding or finance measures the commonwealth would need to implement that index and any recommendations for interagency agreements, intermunicipal agreements or other cooperative agreements that would be required to foster creative and innovative education programs in the public schools. The index shall rate every public school on teaching, encouraging and fostering creativity in students. The index shall be based in part on the creative

opportunities in each school as measured by the availability of classes and before-school and after-school programs offered by and through school districts that provide creative opportunities for students including, but not limited to, arts education, debate clubs, science fairs, theatre performances, concerts, filmmaking and independent research.

The commission shall measure and encourage skill building in increasingly critical areas to employers such as creativity, creative thinking skills, innovation and teamwork. The commission may hold public hearings to assist in the collection and evaluation of data and testimony. The commission shall complete a written report detailing any factors to be considered in the index and any financial measures that would be necessary for implementation. The commission shall submit a report to the governor, the clerks of the senate and house of representatives, the joint committee on tourism, arts and cultural development and the joint committee on education not later than December 31, 2010.

Any research, analysis or other staff support that the commission reasonably requires shall be provided by the department of elementary and secondary education, the executive office of housing and economic development and the executive office of labor and workforce development, in cooperation with the Massachusetts cultural council.

**Section 129C.** Notwithstanding any general or special law to the contrary, agencies of the executive branch, constitutional offices and quasi-governmental agencies shall identify programs and services that support and enhance the development of cultural and creative districts and assures that they are accessible to such districts.

The Massachusetts cultural council shall, in cooperation with the executive branch, constitutional offices, quasi-governmental agencies and the joint committee on tourism, arts and

cultural development, identify additional and existing state incentives and resources that will enhance state designated cultural and creative districts and shall report their findings together with drafts of legislation as may be necessary to carry its recommendations into effect by filing the findings and recommendations with the clerks of the house of representatives and the senate, and the co-chairs of the joint committee on tourism, arts and cultural development not later than December 1, 2010.

**SECTION 130.** The state secretary shall immediately notify all agencies required to file rules or regulations under section 5 of chapter 30A of the General Laws of the new requirements regarding small business impact statements.

**SECTION 131.** (a) There shall be a commission to study the feasibility of establishing a bank owned by the commonwealth or by a public authority constituted by the commonwealth.

(b) The commission shall consist of the secretary for administration and finance and the secretary of housing and economic development or their respective designees, who shall serve as co-chairs of the commission; the state treasurer or the treasurer's designee; the state comptroller or the comptroller's designee; 2 persons to be appointed by the president of the senate, 1 of whom shall be a member of the senate; 1 person to be appointed by the minority leader of the senate; 2 persons to be appointed by the speaker of the house of representatives; 1 of whom shall be a member of the house of representatives; 1 person to be appointed by the minority leader of the house; the executive directors of the Massachusetts Development

Financing Agency and the Massachusetts Housing Finance Agency or their designees; president of the Massachusetts Growth Capital Corporation or the president's; and 8 persons to be appointed by the governor who shall not be employees of the executive branch, 3 of whom shall be drawn from a list of 5 names submitted by the Massachusetts Bankers Association, at least 1

of whom shall be a representative of a community bank operating in the commonwealth, 1 of whom shall be drawn from a list of 3 names submitted by the Associated Industries of Massachusetts, 1 of whom shall be drawn from a list of 3 names submitted by the Small Business Association of New England and 1 of whom shall be a professor at an institution of higher education in the commonwealth who has researched and published articles on banking. Of the governor's remaining appointments, not more than 1 may be a representative of a financial services firm located in the commonwealth. The governor shall ensure geographic diversity in the governor's appointments to the commission. The members of the commission shall be appointed not later 90 days after the effective date of this act.

(c) The commission shall examine the technical, legal and financial feasibility of establishing a commonwealth-owned bank, including but not limited to a commonwealth-owned bank for infrastructure investment purposes. The commission shall seek participation in its deliberations from the president of the Federal Reserve Bank of Boston or the president's designee. The commission shall evaluate the experiences of other states with state-owned banks, identifying the financial performance of such banks and evaluating the lending practices of such banks to show whether such banks successfully fill lending gaps not filled by the private sector. The commission shall also evaluate the manner in which public funds are invested or deposited by the commonwealth and its political subdivisions including funds managed by the state treasurer; the Massachusetts Municipal Depository Trust and state and local pension funds. The commission shall examine the infrastructure investment activities conducted by other states with state-owned banks. The commission shall also examine the lending practices, including lending to support infrastructure, of the existing public agencies in the commonwealth that perform lending services. The Massachusetts development finance agency, Massachusetts Housing

Finance Agency, Health and Educational Facilities Authority, Massachusetts Growth Capital Corporation and any other public authority in the commonwealth that lends money shall cooperate fully with the commission and shall supply information reasonably required by the commission to carry out its charge.

- (d) The commission shall hold at least 3 public hearings in distinct geographic regions of the commonwealth.
- (e) The commission shall publish its findings and recommendations, together with drafts of legislation, if any, necessary to carry those recommendations into effect, in a written report not later than 1 year after the effective date of this act. The report shall be published on the official website of the commonwealth, and shall be contemporaneously filed with the house and senate committees on ways and means and the house and senate chairs of the joint committee on financial services.

Section 131A. The governor, in conjunction with the Massachusetts Broadband Institute, shall submit a report to the clerks of the house of representatives and the senate not later than December 31, 2010, detailing the Massachusetts Broadband Institute's progress in expanding broadband access in the commonwealth. The report shall detail and explain what the administration has done to ensure broadband access in the commonwealth since the effective date of chapter 231 of the acts of 2008, notwithstanding any efforts that have been impacted by funding received from the American Recovery and Reinvestment Act. The report shall include, but not be limited to, explanations of the following: (i) which geographic areas have been identified as lacking broadband access; (ii) which geographic areas have been prioritized to receive broadband access; (iii) how the local economy of these areas has been affected by the

lack of broadband access and how that local economy will be affected if the area receives broadband access; and (iv) how the administration will proceed to ensure all citizens of the commonwealth have access to high-speed internet by June 30, 2011.

**SECTION 131B**. There shall be a commission to study on alternative, dependable sources for funding tourist visitor centers in order to improve tourism throughout the commonwealth.

The commission shall be chaired jointly by the executive director of travel and tourism or the executive director's designee and the executive director of business development or the executive director's designee. The commission shall also include the house and the senate chairs of the joint committee on tourism, arts and cultural development or their designees, 1 representative from the Massachusetts Visitor Industry Council, and 5 additional members to be appointed by the governor who shall be from geographically diverse areas and each of whom is a representatives of a regional tourism council, including the Berkshire Hills Visitors Bureau, the Bristol County Convention and Visitors Bureau, the Cape Cod Chamber of Commerce, the Franklin County Chamber of Commerce, the Greater Boston Convention and Visitors Bureau, the Worcester County Convention and Visitors Bureau, the Martha's Vineyard Chamber of Commerce, the Greater Merrimack Valley Convention and Visitors Bureau, the Mohawk Trail Association, the North of Boston Convention and Visitors Bureau, the Greater Springfield Convention and Visitors Bureau, the Plymouth County Development Council, Inc., and the Nantucket Island Chamber of Commerce.

The study shall include but not be limited to effects of funding cuts on staffing and services, as well exploring alternative, dependable sources to fund tourist centers. The commission shall report the results of the study to the office of travel and tourism, the office of

business development, the joint committee on tourism, arts and cultural development, and the house and senate committees on ways and means no later than December 31, 2010.

**SECTION 131C.** The executive office of labor and workforce development shall conduct a study on the effects of altering the commonwealth's unemployment insurance statutes to maximize the share of federal dollars used to pay for unemployment benefits without impacting the benefits received by residents of the commonwealth, and shall report its findings to the joint committee on labor and workforce development not later than 1 year after the effective date of this act.

**SECTION 131D.** No at-will employees of a state authority, as defined in section 1 of chapter 29 of the General Laws, may be provided compensation in salary or wages in excess of the salary provided to the governor, under section 1 of chapter 6 of the General Laws, unless there is a documented justification for such higher compensation, and said documentation is signed by the secretary of administration and finance.

**SECTION 131E.** No state authority, as defined in section 1 of chapter 29 of the General Laws, may enter into a contract, executed after the effective date of this act, with an employee that provides compensation in salary or wages in excess of the salary provided to the governor, under section 1 of chapter 6 of the General Laws unless there is a documented justification for such higher compensation, and said documentation is signed by the secretary of administration and finance.

**SECTION 132.** The Massachusetts office of business development shall within 180 days of the effective date of this act publish and release a solicitation for a competitive regional economic development bidding process under section 3K of chapter 23A. The solicitation shall

seek applications from eligible organizations under said section 3K to act as the commonwealth's primary agents for business development in each region of the commonwealth.

The Massachusetts office of business development may implement the bidding process as a phased, multi-step process that may include 1 or more of the following prior to the issuance of a request for proposals:

- (i) a request for information that would inform the development of a request for proposals;
- (ii) a call for solutions that would focus on regional approaches to meet the needs of specified industry sectors or clusters or locations in the commonwealth; and
- (iii) a request for qualifications that would determine the pool of entities that would be eligible to apply for funding.

The Massachusetts office of business development shall not initiate the bidding process under this section until the Massachusetts office of business development promulgates the formula for contractual reimbursement required in sections 3J and 3K of chapter 23A.

SECTION 133. Within 90 days of the effective date of this act or at least 180 days before the expiration of the current contract with the Massachusetts business development corporation, whichever shall occur earlier, the Massachusetts office of business development shall initiate a competitive process seeking bidders to administer, either jointly or separately, the capital access program described in sections 57 and 58 of chapter 23A of the General Laws and the redevelopment access to capital program described in sections 60 and 61 of said chapter

23A. Contracts for the administration of the programs described in the preceding sentence shall be within the definition of "services," as defined in section 1 of chapter 12A of the General

Laws.

**SECTION 133A.** The executive office of housing and economic development and the economic assistance coordinating council shall promulgate regulations that reflect the changes implemented in section 74A of this act.

**SECTION 134.** The state comptroller shall transfer the balance of the Economic Stabilization Trust, established by section 8 of chapter 23D of the General Laws, to the Massachusetts Growth Capital Corporation, established in chapter 40F, to be used to provide financing and technical services to small business.

**SECTION 135.** Sections 65 to 71 of this act shall only apply to regulations proposed after the effective date of this act.

**SECTION 135A.** Sections 2, 4, 8, 9, 15 to 35, inclusive, 40 to 43, inclusive, 53, 54, 57, 59, 60, 61, 74 to 76, inclusive, 78, 81 to 89, inclusive, 95, 105, 109 to 112, inclusive, 116, 119 to 121, inclusive, 128, 129 and 134 shall take effect on July 1, 2010.

**SECTION 136.** Sections 38 and 39 shall take effect upon the termination of the Massachusetts office of business development's current contract with the Massachusetts business development corporation, without renewal or extension of those contracts.

**SECTION 136A.** Sections 96 to 101 shall apply only to districts created on or after the effective date of this act.

SECTION 136B. Sections 102, 103, 114 and 115 of this act shall take effect not later than December 31, 2010; provided, however, that said sections shall take effect earlier upon certification and 30 day notice from the chief justice for administration and management that the trial courts have the capacity to track the number of statements of claim filed by any party during a calendar year in a small-claims session of the court, in either the district court or the Boston municipal court; and provided further that if the capacity does not exist as of October 31, 2010, the chief justice for administration and management shall file a report with the president of the senate and the speaker of the house of representative detailing the status of such efforts and estimating when such capacity will exist.

**SECTION 136C.** Section 104 shall apply only to taxes assessed on or after January 1, 2011.